



June 29, 2017

SENT VIA U.S. MAIL

Arizona MSCP Permittee:

Pursuant to the Hoover Power Allocation Act of 2011, the United States' Western Area Power Administration (WAPA) was tasked with reallocating a portion of Hoover power to federally recognized Indian tribes. In WAPA's final decision, those tribes were reallocated approximately 3% of Hoover's power with delivery to begin in 2018. Contingent upon the receipt of that reallocated power is that the tribes must pay a proportionate share of the costs attributable to Hoover power users by the Multi-Species Conservation Program ("MSCP").

Since the total cost of the MSCP is not impacted by this process, the addition of the tribal cost-share means that MSCP permittees receiving Hoover power through the Arizona Power Authority will receive approximately a 3% reduction in their MSCP payment. Most importantly, this reduction will not impact coverage under the MSCP. All activities that were previously covered by the MSCP will still be covered.

The necessity for this supplement is that the Trustee, BNY Mellon, uses a 2003 payment baseline to determine whether the Arizona permittees fully fund the trust each year. Without an amendment to this baseline, the Hoover power portion of the MSCP will not collect enough monies to fully fund the trust in future years which would result in a technical default by the Arizona permittees pursuant to the terms of the Indenture.

To effectuate this change, Exhibit A of the Trust Indenture and Joint Payment Agreement dated April 4, 2005, (the "Indenture") will need to be amended. Exhibit A of the Indenture currently establishes the 2003 baseline at \$119,000 for Hoover power users. This amendment will decrease that baseline to \$115,276.

For those Arizona MSCP permittees that do not receive Hoover power, this amendment will have no financial impact. However, all Arizona MSCP permittees, even those not impacted by this change, will be required to execute the attached Supplemental Indenture.

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Finally, section 5.03 of the Indenture requires consent from the United States Bureau of Reclamation and the United States Fish and Wildlife Service for any supplement that would "reduce the total amount the Arizona Participants are obligated to pay..." CAWCD sought and obtained such consent from both entities, which consent is identified in the certificates of inclusion that must be signed by the tribes before receipt of Hoover power.

I have attached a copy of the Supplemental Trust Indenture and Joint Payment Agreement, Exhibit A to the Indenture, and two copies of the relevant signature page for your organization. Please execute and return both copies of the signature page to me by September 1, 2017. If you have any questions about this process, I would be happy to discuss and may be reached at (623)-869-2375 or via email at djohnson@cap-az.com.

Sincerely,

A handwritten signature in black ink, appearing to read "David Johnson", written in a cursive style.

David Johnson
Senior Attorney

Enclosures

SUPPLEMENTAL TRUST INDENTURE AND JOINT PAYMENT AGREEMENT

This **SECOND SUPPLEMENT TO TRUST INDENTURE AND JOINT PAYMENT AGREEMENT** (this "*Second Supplement*"), dated as of October 1, 2017, is from the Arizona Participants in the Lower Colorado River Multi Species Conservation Program as that term is defined in this Second Supplement to The Bank of New York Mellon Trust Company, N.A., successor to J.P. Morgan Trust Company, National Association, a national banking association duly established and existing under and pursuant to the laws of the United States of America (the "*Trustee*"), authorized to accept and execute trusts of the character in the Indenture set forth

WITNESSETH

WHEREAS, certain of the Arizona Participants, together with Arizona Game and Fish and the Arizona Department of Water Resources and together with the California Parties, the Nevada Parties, and the Federal Parties, developed a Lower Colorado River Multi-Species Conservation Program (the "*Program*") to provide the basis for compliance with Section 10(a)(1)(B) of the Federal Endangered Species Act;

WHEREAS, to implement the Program, certain of the Arizona Participants, the California Parties, the Nevada Parties and the Federal Parties entered into an Implementing Agreement dated as of April 4, 2005 (the "*Implementing Agreement*") and a Funding and Management Agreement dated as of April 4, 2005 (the "*Funding and Management Agreement*");

WHEREAS, certain of the Arizona Participants entered into the Trust and Indenture and Joint Payment Agreement, dated as of April 4, 2005 (the "*Indenture*") and into the First Supplement to Trust Indenture and Joint Payment Agreement, dated October 1, 2013 (the "*First Supplement*");

WHEREAS, to ensure that adequate funding for the Arizona portion of the Program will be provided, the Indenture provides for the payments of each Arizona Participant's share of the Arizona Payment Amount (as defined in the Indenture);

WHEREAS, pursuant to the Hoover Power Allocation Act of 2011, the Western Area Power Administration ("WAPA"), operating on behalf of the United States Secretary of Energy, was required to allocate Hoover power to federally recognized Indian tribes, among other parties;

WHEREAS, on December 18, 2014, WAPA published in the Federal Register (79 Fed. Reg. 75544) the Boulder Canyon Project Post-2017 Resource Pool Final Allocation of Power (the "*Final Allocation*") in which WAPA allocated certain volumes of Schedule D power to the Arizona Tribal Participants;

WHEREAS, pursuant to WAPA's power marketing criteria, the Arizona Tribal Participants must pay a proportionate share of its State's respective contribution (determined in accordance with each State's applicable funding agreement) to the cost of the Program which share will be paid by the Arizona Tribal Participants directly to Reclamation;

WHEREAS, the Indenture authorizes the Arizona Participants and the Trustee to enter into Supplemental Indentures. Pursuant to the terms of the Indenture, if a supplemental indenture reduces the total amount the Arizona Participants are obligated to pay to the Program, Reclamation and the Service must consent to the execution, delivery, and administration of the supplement;

WHEREAS, Reclamation and the Service have consented to the reduction of the total amount the Arizona Participants must contribute to the Program in certificates of inclusion that were issued to each of the Arizona Tribal Participants. In those certificates of inclusion, the Arizona Tribal Participants agreed to pay their proportionate share of Arizona's respective contribution to the cost of the Program;

WHEREAS, since the execution of the Indenture, certain entities in Arizona have requested to join the Arizona Participants group which addition is also being effected by this Second Supplement;

WHEREAS, the Arizona Participants and the Trustee have determined that all acts and things have been done and performed which are necessary to make the Indenture, as supplemented by this Second Supplement, a valid, binding and legal trust agreement for the security of the Arizona Payment Obligations; and

WHEREAS, the Trustee has accepted the trusts created by this Second Supplement and in evidence thereof has joined in the execution hereof.

NOW, THEREFORE, to secure the payment of the Arizona Payment Obligations according to the Program Documents, to secure the performance and observance of all of the covenants, agreements, obligations and conditions applicable to the Arizona Participants contained in the Indenture, in the First Supplement, and in this Second Supplement, and in consideration of the promises and the acceptance by the Trustee of the trusts created in the Indenture, in the First Supplement, and in this Second Supplement, and of the execution and delivery by the appropriate Parties of the Permit reflecting the Arizona Participants as Permittees and for other good and valuable consideration, the receipt of which is acknowledged, the Arizona Participants have executed and delivered this Second Indenture and absolutely pledge and assign hereby to the Trustee, and to its successors in trust, and its and their assigns, all right, title and interest of the Arizona Participants in and to (i) all of the amounts to be paid to the Trustee under the terms of the Indenture, the First Supplement, and this Second Supplement; (ii) all amounts held in the Funds and Accounts established pursuant to the Indenture and the First Supplement, and (iii) all funds or obligations which are by the express provisions of the Indenture, the First Supplement, and this Second Supplement required to be subjected to the lien hereof and any additional funds or

obligations that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof, by an Arizona Participant or by anyone in its behalf, and the Trustee is hereby authorized to receive the same at any time as additional security hereunder,

TO HAVE AND TO HOLD unto the Trustee and its successors in trust and its and their assigns forever;

BUT IN TRUST, NEVERTHELESS, and subject to the provisions hereof,

(a) for the benefit, security and protection of the United States of America, acting by and through the United States Department of the Interior Bureau of Reclamation and by and through the United States Fish and Wildlife Service,

(b) for the enforcement of the payment of the Arizona Payment Obligations, when payable, according to the true intent and meaning of the Program Documents and of the Indenture, the First Supplement, and this Second Supplement, and

(c) to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of the Indenture, the First Supplement, and this Second Supplement, in each case;

Provided, however, that if (i) the Arizona Payment Obligations shall be well and truly paid, at all times and in the manner and according to the true intent and meaning of the Program Documents, and (ii) all of the covenants, agreements, obligations, terms and conditions of the Arizona Participants under the Indenture, the First Supplement, and this Second Supplement shall have been kept, performed and observed, and there shall have been paid to the Trustee all sums of money due or to become due to the Trustee in accordance with the terms and provisions hereof, then, the Indenture, the First Supplement, and this Second Supplement and the rights assigned thereby shall cease, determine and be void, except as otherwise specifically provided herein; otherwise, the Indenture, the First Supplement, and this Second Supplement shall be and remain in full force and effect.

It is declared that all obligations of the Arizona Participants to pay all or any portion of the Arizona Payment Obligations are to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes provided in the Indenture, the First Supplement, and in this Second Supplement.

In consideration of the premises, the acceptance by the Trustee of the additional trusts and obligations hereby created and originally created by the Indenture and the First Supplement, the mutual covenants herein contained, and for other valuable consideration, the receipt whereof is hereby acknowledged, and to authorize the addition of the Arizona Tribal Participants as Arizona Participants and to modify the calculation of the payment of the Arizona Payment Obligations, the Arizona Participants have agreed and covenanted and agree and covenant with the Trustee and with each and all other Arizona Participants, as follows:

ARTICLE I

AUTHORITY AND DEFINITIONS

Section 1.01 Supplemental Indenture of Trust. This Second Supplement is supplemental to the Indenture and the First Supplement.

Section 1.02 Authority for this Second Supplement. This Second Supplement is entered into pursuant to, and in accordance with, Article V of the Indenture.

Section 1.03. Definitions added to the Indenture:

(a) Except as otherwise defined by this Second Supplement, all capitalized terms used in this Second Supplement shall have the meaning ascribed to it in the Indenture, the First Supplement, the Funding and Management Agreement, and the Implementing Agreement.

(b) **Additional Definitions.** The following terms shall, with respect to the Indenture, as supplemented by the First Supplement and by this Second Supplement and for all purposes hereof and thereof, have the meanings set forth below:

"Arizona Participants" means the following parties hereto:

AEPCO
APA
Bullhead City
CAWCD
Cibola Valley IDD
EAPPA
ED3
Town of Fredonia
Town of Gilbert
Golden Shores WCD
HIDD
Lake Havasu City
Town of Marana
City of Mesa
Mohave County WA
Mohave Valley IDD

Mohave WCD
North Gila Valley IDD
SRP
City of Somerton
Town of Thatcher
Unit "B" IDD
Wellton – Mohawk IDD
Town of Wickenburg
City of Williams
City of Yuma
YCWUA
Yuma ID
Yuma Mesa IDD

"Arizona Tribal Participants" means the federal recognized Indian tribes receiving an allocation of Hoover power pursuant to the Hoover Power Allocation Act of 2011, which are the following parties hereto:

Fort McDowell Yavapai Nation
Gila River IC
Hualapai IT
Kaibab Band of Paiute Indians
Navajo TUA
Pasqua Yaqui Tribe
Salt River Pima-Maricopa IC
Tohono O'odham Nation
Tonto Apache Tribe

"EAPPA" means the Eastern Arizona Preference Pooling Association, a municipal corporation of the State, or any successor thereto.

"Final Allocation" means the Boulder Canyon Project Post-2017 Resource Pool Final Allocation of Power, published in the Federal Register and effective on December 18, 2014.

"Fort McDowell Yavapai Nation" means the Fort McDowell Yavapai Nation, a federally recognized Indian tribe located within the State, or any successor thereto.

"Gila River IC" means the Gila River Indian Community, a federally recognized Indian tribe located within the State, or any successor thereto.

"Town of Gilbert" means the Town of Gilbert, a municipal corporation of the State, or any successor thereto.

"HIDD" means the Hohokam Irrigation and Drainage District, a political subdivision of the State, or any successor thereto.

"Hualapai IT" means the Hualapai Indian Tribe, a federally recognized Indian tribe located within the State, or any successor thereto.

"Kaibab Band of Paiute Indians" means the Kaibab Band of Paiute Indians, a federally recognized Indian tribe located within the State, or any successor thereto.

"Town of Marana" means the Town of Marana, a municipal corporation of the State, or any successor thereto.

"Navajo TUA" means the Navajo Tribal Utility Authority, an enterprise of the Navajo Nation, a federally recognized Indian tribe located partially within the State, or any successor thereto.

"Pasqua Yaqui Tribe" means the Pasqua Yaqui Tribe, a federally recognized Indian tribe located within the State, or any successor thereto.

"Salt River Pima-Maricopa IC" means the Salt River Pima-Maricopa Indian Community, a federally recognized Indian tribe located within the State, or any successor thereto.

"Second Supplement" means this Second Supplement to Trust Indenture and Joint Payment Agreement, dated as of ____ __, 201__, as amended or supplemented from time to time.

"Supplemental Indenture" means any indenture supplemental to the Indenture entered into between the Arizona Participants and the Trustee in accordance with Article V hereof.

"Tohono O'odham Nation" means the Tohono O'odham Nation, a federally recognized Indian tribe located within the State, or any successor thereto.

"Tonto Apache Tribe" means the Tonto Apache Tribe, a federally recognized Indian tribe located within the State, or any successor thereto.

"WAPA" means the Western Area Power Administration.

"City of Williams" means the City of Williams, a municipal corporation of the State, or any successor thereto.

ARTICLE II

EXHIBIT A

Section 2.01 Exhibit A: Exhibit A of the Indenture shall be replaced and superseded by Exhibit A to this Second Supplement.

IN WITNESS WHEREOF, the Arizona Participants have caused this Second Supplement to be executed and delivered for and in their name and on their behalf by their duly authorized officers; in token of its acceptance of the trusts created hereunder, the Trustee has

caused this Second Supplement to be executed and delivered for it and in its name and on its behalf by its duly authorized officer.

Trustee

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.**

By _____
Authorized Representative

The Bank of New York Mellon
Trust Company, N.A.
as successor in interest to
**J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION**

The Arizona Participants have signed on the following pages:

Signature Pages

CITY OF YUMA, ARIZONA, a municipal
corporation of the State of Arizona

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

CITY OF YUMA, ARIZONA, a municipal
corporation of the State of Arizona

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

EXHIBIT A

CERTAIN DEFINITIONS; CALCULATION OF QUARTERLY PAYMENT AMOUNTS

Definitions: For the purpose of Exhibits A, B and C, in addition to terms defined in the body of this Indenture, the following terms will have the following meanings:

"Additional Inflation Adjustment" means with respect to payment of the Arizona Additional Payment in any Program Year, the Inflation Adjustment for that Program Year divided by the Inflation Adjustment for the Program Year in which payment of the Arizona Additional Payment commenced.

"Consumptive Use" means, for any water user for any Program Year, the consumptive use as recorded in the Final Accounting for the most recent calendar year for which a Final Accounting is available, or if none is recorded, then the amount of diversions so recorded. For any Arizona Participant with rights to or contracts for Colorado River water with a priority date of September 30, 1968 or earlier and also rights to or contracts for Colorado River water with a priority date later than September 30, 1968, Consumptive Use will be allocated pro rata among all such rights and contracts, in accordance with the amount of water entitlement thereunder, to determine the Quarterly Payment Amounts due from that Arizona Participant.

"Contract Energy" means the amount of Parker Davis energy the Parker Davis Power User is entitled to pursuant to its Firm Electric Service Contracts and Aggregate Power Manager Contracts.

"Final Accounting" means, for any calendar year, the United States Bureau of Reclamation's final compilation of records of Colorado River diversions, return flows, and consumptive uses for the year, compiled pursuant to Article V(B) of the Decree of the United States Supreme Court in *Arizona v. California*, 376 U.S. 340 (1964).

"Inflation Adjustment" means for any Program Year the inflation adjustment factor calculated for that Program Year pursuant to Section 8.1.1 of the Funding and Management Agreement.

"Total Deferred" means the amount by which the Arizona Quarterly Deposit Amounts were reduced during the first ten years of the Program by payments made by the Advancing Parties, inflated at the Inflation Adjustment from the Program Year paid until the Program Year in which payment of the Arizona Additional Payments commences.

1. **Quarterly Payment Amounts.** The Quarterly Payment Amount for each Arizona Participant for each Quarterly Payment Date shall be determined by CAWCD based on the type of participant and the applicable formula described below:

A. Pre-1968 Water Users (those having rights to or contracts for Colorado River water with a priority date of September 30, 1968 or earlier):

These include:

Mohave Valley IDD (as to pre-1968 entitlement)
North Gila Valley IDD
Unit "B" IDD
Wellton – Mohawk IDD
City of Yuma
YCWUA
Yuma ID
Yuma Mesa IDD

For each Quarterly Payment Date in any one Program Year, the Quarterly Payment Amount for any Pre-1968 Water User will equal:

$$\frac{CU \times AFR \times IA}{4}$$

where: CU is the Consumptive Use of such Pre-1968 Water User for that Program Year, in Acre-Feet.

AFR is the Acre-Foot Rate which is equal to \$0.25 per Acre-Foot each year through and including 2015, and \$0.50 per Acre-Foot each year thereafter.

IA is the Inflation Adjustment for that Program Year.

B. Post-1968 Water Users (those having rights to or contracts for Colorado River water with a priority date later than September 30, 1968):

These include:

Bullhead City
CAWCD
Cibola Valley IDD
Lake Havasu City
Golden Shores WCD
Mohave County WA
Mohave Valley IDD (as to Consumptive Use from other than its pre-1968 entitlement)
Mohave WCD
City of Somerton

For each Quarterly Payment Date in any one Program Year, the Quarterly Payment Amount for any Post-1968 Water User will equal:

$$\frac{CU \times AFR \times IA}{4}$$

where: CU is the Consumptive Use of such Post-1968 Water User for that Program Year, in Acre-Feet.

AFR is the Acre-Foot Rate which is equal to \$0.25 per Acre-Foot each year to and including 2015, and \$1.00 per Acre-Foot each year thereafter.

IA is the Inflation Adjustment for that Program Year

C. Hoover Power Users

These include:

APA (for itself and its power contractors).

For each Quarterly Payment Date in any one Program Year, the Quarterly Payment Amount for the Hoover Power Users is:

$$\frac{\$115,276 \times IA}{4}$$

where: IA is the Inflation Adjustment for that Program Year.

D. Parker Davis Power Users

These include:

AEPCO
ED3
Town of Fredonia
City of Mesa
SRP
Town of Thatcher
Wellton - Mohawk IDD
Town of Wickenburg
Yuma County WUA
Yuma ID

For each Quarterly Payment Date in any one Program Year, the Quarterly Payment Amount for any Parker Davis Power User will equal:

$$\frac{\$86,000 \times CE \times IA}{CET \times 4}$$

where: CE is the Parker Davis Power User's Contract Energy in kWh.

IA is the Inflation Adjustment for that Program Year.

CET is the total Contract Energy in kWh of all Non-Federal Parker Davis power customers in Arizona. CET will be 568,305,449 kWh through September 30, 2008, and will be adjusted prior to October 1, 2008, to apply thereafter, to equal the total Contract Energy in kWh of all Non-Federal Parker Davis power customers in Arizona, including under contracts entered into pursuant to post-2008 Western Area Power Administration reallocation of Parker Davis Power.

2. **Credits and In-Kind Goods and Services.** The value and credit of prepayments or in-kind goods and services shall be credited to a Participant only in the amounts and at the times and to the extent approved by CAWCD and only to the extent of the credit in the amounts and at the times and approved by the Program Manager and the Steering Committee as a credit against the obligation of the Arizona Participants. Such value is subject to change based on any change made thereto by the Program Manager following audit.
3. **Adjustment for Additional Revenue Sources.** The formulas under Paragraph 1 of this Exhibit A may be adjusted by agreement of the Arizona Participants in the event that additional funds, assets or services become available to pay any portion of the Arizona Payment Obligation.
4. **Adjustment for Excess Revenues.** The formulas under Subparagraphs A and B of Paragraph 1 of this Exhibit A may be adjusted by agreement of the affected Arizona Participants if the payments made and to be made into the Payment Fund are determined by CAWCD to be in excess of what will be needed then and in the future to pay all amounts required to be paid therefrom. CAWCD may make such determination at any time and shall, each Program Year after year 44 of the LCR MSCP, review the revenues, available funds and payment obligations to see if such determination can be made.