

AGREEMENT AMONG THE COLORADO RIVER INDIAN TRIBES, THE STATE OF ARIZONA, AND THE SECRETARY OF INTERIOR REGARDING OFF-RESERVATION USE OF THE CRIT WATER

This Agreement is entered into by the **COLORADO RIVER INDIAN TRIBES** (the “**CRIT**”), the **STATE OF ARIZONA** acting through the Arizona Department of Water Resources (“**ADWR**”), and the **SECRETARY OF THE DEPARTMENT OF INTERIOR** (the “**Secretary**”). In this Agreement, ADWR, the CRIT, and the Secretary are sometimes each individually called “**Party**” and sometimes collectively called “**Parties**.”

Recitals

- A. The CRIT is seeking, or has obtained, federal legislation to authorize the CRIT to enter leases or options to lease, an exchanges or options to exchange, or Storage agreements for the use and Storage of a portion of the CRIT Consumptive Use off the Reservation in the part of the State of Arizona that is in the Lower Basin (collectively referred to in this Agreement as the “**CRIT Water Agreements**”) and to authorize the Secretary to approve such agreements (“**Federal Legislation**”).
- B. The CRIT is a federally recognized Indian tribe not subject to the jurisdiction of ADWR for activities conducted on its Reservation. However, the CRIT acknowledge that State law may apply to the recipients of water from the CRIT Decreed Allocation pursuant to CRIT Water Agreements.
- C. According to the laws of the State of Arizona, the Director of the Arizona Department of Water Resources (“**Director**”) is generally responsible for formulating plans and programs for the development, management, conservation and use of surface water and groundwater throughout the State of Arizona, including the State’s apportionment of 2.8 million acre-feet of Colorado River water in the Lower Basin. The CRIT Decreed Allocation is accounted for by the Secretary within the total State of Arizona’s Lower Basin apportionment from the Colorado River.
- D. The Secretary is, or will be, authorized by the Federal Legislation to approve CRIT Water Agreements that are in compliance with the Federal Legislation and this Agreement, and is responsible as Water Master for the Lower Colorado River for accounting for the use of the CRIT Decreed Allocation.
- E. The Parties desire to enter into this Agreement to establish a cooperative process to provide notice, share information, and collaborate in advance of the CRIT executing a CRIT Water Agreement, and for the procedures to quantify, report, verify, and account for the portion of the CRIT Decreed Allocation included in CRIT Water Agreements.

The Parties agree as follows:

Section 1. Definitions

The capitalized terms used in this Agreement shall have the meanings as set forth in this Agreement or the same meanings as set forth in the Federal Legislation. The definitions shall conform to the definitions in the Federal Legislation upon enactment. A list of such definitions is attached as Exhibit A.

Section 2. Effective Date

This Agreement shall be effective the later of the date it is signed by all Parties or the enactment of Federal Legislation.

Section 3. CRIT Water Rights

1. The water rights for the CRIT were confirmed by the United States Supreme Court in the series of cases known as *Arizona v. California* as first-priority present perfected rights as quantified in the Consolidated Decree. The CRIT Decreed Allocation available for use in the State of Arizona is quantified as: (i) diversions of 662,402 acre-feet per year; or (ii) consumptive use required for irrigation of 99,375 acres and satisfaction of related uses, whichever of (i) or (ii) is less.
2. This Agreement does not apply to the CRIT water rights as quantified in the Consolidated Decree for use within the State of California.

Section 4. Quantification of Consumptive Use for Lease, Exchange or Storage

1. All water made available by the CRIT for use off the Reservation shall be from the reduction of Consumptive Use on the Reservation during the term of any CRIT Water Agreement. The initial technical methodology to calculate Consumptive Use reductions from fallowing is included in Exhibit B, which may be modified or replaced by agreement of the Parties.
2. The CRIT shall prepare technical memoranda documenting the reduced Consumptive Use on the Reservation in volumes sufficient to satisfy the requirements of each CRIT Water Agreement. The technical memoranda shall include:
 - a. an identification of each parcel on which Consumptive Use will be reduced and a map showing the location of each parcel;
 - b. a record of water use on the parcel for the previous five years;
 - c. a description of the fallowing, conservation, or other on-Reservation program or project to be implemented to reduce on-Reservation Consumptive Use for each parcel;
 - d. the volume of reduced diversions that correlate to the reduced Consumptive Use;

- e. a reporting and verification methodology for the reduced Consumptive Use;
 - f. actions to be taken by the CRIT to maintain the reduced Consumptive Use during the term of the CRIT Water Agreement, including vegetation control, preventive measures to control the inadvertent delivery of irrigation water, and other measures as set forth in the technical memoranda; and
 - g. on-Reservation measures for dust and weed control.
3. The CRIT shall provide copies of the technical memoranda to the State and the Secretary at least 60 days prior to execution of a CRIT Water Agreement. A Party may request reasonable clarifying information and may request a meeting to discuss the technical memoranda. All Parties agree to make a good-faith effort to comply with any such request.

Section 5. Reporting and Verification

1. On or before April 15 of each year following a year in which a CRIT Water Agreement is in effect, the CRIT shall prepare and provide a report to the Parties that documents the on-Reservation reduction in Consumptive Use and reduced diversions for the previous year in the amounts equivalent to reductions set forth in the technical memoranda in effect for that year.
 - a. The Parties may meet to review the annual report.
 - b. The CRIT and the Secretary may provide additional information, and CRIT may adjust the quantification in the report based on new or additional information.
2. The Secretary, acting through the Bureau of Reclamation, may use the existing in-person, periodic, on-field verification process, and satellite imagery in conjunction with its *Remotely Sensed Data Acquisition Program* to determine whether the lands identified in technical memoranda are being fallowed or partial-year fallowed to reduce Consumptive Use consistent with the technical memoranda. The Secretary will work with the Parties to develop appropriate verification methodologies for conservation or other on-Reservation programs and projects to be implemented to reduce on-Reservation Consumptive Use.
3. The CRIT hereby grants access to the Secretary to perform any on-Reservation verification and agrees to grant access to the State upon request for the same purpose.

Section 6. Accounting

The CRIT shall reduce the water order requested for delivery on the Reservation by an amount equivalent to the volume of water to be delivered off the Reservation pursuant to a CRIT Water Agreement. The Secretary shall report the portion of the CRIT Decreed Allocation that was delivered off the Reservation pursuant to a CRIT Water Agreement in the Water Accounting Report.

Section 7. Term, Amendment, Modification, and Termination

1. This Agreement shall remain in effect until terminated pursuant to this Section.
2. This Agreement may be terminated by the agreement of all of the Parties by exchanging written letters of termination.
3. This Agreement may be amended, modified, or supplemented by agreement of all the Parties by exchanging written letters of amendment, modification, or supplement.
4. The amendment, modification, or termination of this Agreement shall not affect the validity or the terms of CRIT Water Agreements entered in compliance with the Federal Legislation and the terms of this Agreement in effect as of the effective date of the CRIT Water Agreement.

Section 8. Notices

1. Any notice, demand, or request authorized or required by this Agreement shall be in writing and shall be deemed to have been duly given if mailed, first class postage prepaid, or hand-delivered at the following address:

If to ADWR:

Director
1110 W. Washington St.
#310
Phoenix, AZ 85007
Copy to: Chief Counsel

If to CRIT:

Chairman
26600 Mohave Rd.
Parker, AZ 85344
Copy to: Attorney General

If to the Secretary:

Copy to:

2. A Party may change its address by giving the other Parties notice in writing of the change in address.

Section 9. Limited Waiver of Sovereign Immunity, Governing Law and Venue

1. The CRIT hereby agrees to a limited waiver of its sovereign immunity from suit by ADWR solely for the purpose of interpretation or enforcement of this Agreement.
2. Federal law controls the interpretation and enforcement of the CRIT water rights in the Lower Basin and is the basis for all functions and responsibilities the Secretary performs as Water Master of the Lower Colorado River Basin. This Agreement shall be interpreted, governed by, and construed under Arizona State law. Any action between the State of Arizona and the CRIT to interpret or enforce the terms of this Agreement shall be in Arizona state court and the CRIT shall waive its right to remove it to federal court. This Agreement does not waive the United States' right to object to any Arizona state court exercising jurisdiction over disputes brought under this Agreement involving the United States as a party.

Section 10. Miscellaneous

1. This Agreement is solely for the benefit of the Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this Agreement.
2. The waiver by a Party of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition of this Agreement.
3. The terms, covenants and conditions of this Agreement constitute the entire agreement among the Parties, and no understanding or obligation not expressly set forth in this Agreement shall be binding on them.
4. Pursuant to A.R.S. § 38-511, the State may terminate this Agreement upon finding that a State employee that was significantly involved in the creation of this Agreement is, at the time the Agreement is in effect, but no later than three years after its termination, an employee or consultant to any other party to the Agreement.
5. This Agreement may be signed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. All signatures need not be on the same counterpart.
6. The signatories to this Agreement represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for which they sign and that no further action or approvals are necessary before execution of this Agreement.

Section 11. Legal Authorities

This Agreement among the Colorado River Indian Tribes, the Arizona Department of Water Resources, and the Secretary has been reviewed by the undersigned attorneys, who have determined that said Agreement is in proper form and is within the powers and authority of those parties represented by the undersigned.

Dated this _____ day of _____, 20__

Signature Blocks

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EXHIBIT A
Definitions

- (a) ALLOTTEE.—The term “Allottee” means a person who holds a beneficial real property interest in an allotment of Indian land that is:
- i. located within the exterior boundaries of the Colorado River Indian Reservation; and
 - ii. held in trust by the United States.
- (b) COLORADO RIVER INDIAN RESERVATION.—The term “Colorado River Indian Reservation” or “Reservation” means, for purposes of this legislation, only that part of the reservation established for the Colorado River Indian Tribes that is located in the State of Arizona and not the part of the reservation that is located in the State of California.
- (c) CONSOLIDATED DECREE.—The term “Consolidated Decree” means the Consolidated Decree entered by the United States Supreme Court in Arizona v. California, 547 U.S. 150 (2006).
- (d) CONSUMPTIVE USE. – The term “Consumptive Use” means a portion of the Decreed Allocation that has been consumptively used by the CRIT within the exterior boundary of the Reservation for a minimum of four of the five years immediately preceding the year of delivery of a portion of the Decreed Allocation according to a lease, exchange or Storage agreement. Any verified reduction in Consumptive Use pursuant to a system conservation agreement, a lease, an exchange, or Storage agreement, or from the creation of intentionally created surplus shall be deemed to be a Consumptive Use in the year in which the reduction occurred, if the reduction is reflected in the Water Accounting Report.
- (e) CRIT.—The term “CRIT” means the Colorado River Indian Tribes, a federally recognized Indian tribe.
- (f) DECREED ALLOCATION.—The term “Decreed Allocation” means the volume of water of the mainstream of the Colorado River allocated to the CRIT that is accounted for as part of the apportionment for the State of Arizona as decreed by the United States Supreme Court in Part I-A of the Appendix to the Consolidated Decree.
- (g) LOWER BASIN.—The term “Lower Basin” has the meaning given the term in Article II(g) of the Colorado River Compact, 1922, as approved by Congress in the Act of December 21, 1928 (45 Stat. 1057) and by Presidential Proclamation of June 25, 1929 (46 Stat. 3000).
- (h) PERSON.—The term “Person” means an individual, a public or private corporation, a company, a partnership, a joint venture, a firm, an association, a society, an estate or trust, a private organization or enterprise, the United States, any Indian tribe, a

- governmental entity; and a political subdivision or municipal corporation organized under or subject to the constitution and laws of the State of Arizona.
- (i) SECRETARY.—The term “Secretary” means the United States Secretary of the Interior.
 - (j) STATE.—The term “State” means the State of Arizona.
 - (k) STORAGE. – The term “Storage” means the storage underground of a portion of the CRIT Consumptive Use off the Reservation within the part of the State in the Lower Basin and in accordance with State law.
 - (l) WATER ACCOUNTING REPORT.—The term “Water Accounting Report” means the annual “Colorado River Accounting and Water Use Report – Arizona, California, and Nevada” prepared by the Bureau of Reclamation that includes, but is not limited to, the compilation of records in accordance with Article V of the Consolidated Decree.

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EXHIBIT B Consumptive Use Calculations

The CRIT shall annually reduce the Consumptive Use on the Reservation by an amount equal to the amount of water made available for delivery off the Reservation pursuant to a CRIT Water Agreement.

The reductions on the Reservation will be calculated for fallowing as follows:

For the 5 years analyzed, the weighted average net irrigation water requirement (NIR) or net consumptive irrigation requirement (NetCU) is determined based on acreages of the individual crop types and the NIR or NetCU of each crop for that year. Using this result, an overall average unit area net crop consumptive irrigation water use (AF/ac) for the highest 4 years of the 5-year study period is determined. This 4-year average unit area net crop consumptive irrigation water use is listed for each Farm Unit in a table. The 4-year average unit area net crop consumptive irrigation water use is multiplied by the maximum annual acres irrigated in the Farm Unit during the 4-year period used to calculate 4-year average to determine the total volume of NetCU due to fallowing and listed for each parcel.

Quantification of reductions from a conservation or other on-Reservation program or project that does not involve fallowing shall be specified in the technical memoranda for the CRIT Water Agreement.