

**AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF WATER
RESOURCES AND THE NATIONAL AUDUBON SOCIETY TO FUND THE
CREATION OF SYSTEM CONSERVATION WATER IN LAKE MEAD BY THE
COLORADO RIVER INDIAN TRIBES**

PREAMBLE: The Colorado River Indian Tribes (“CRIT”) have agreed to fallow sufficient irrigable farm land on the Colorado River Indian Reservation in Arizona (“CRIR”) to create a 50,000 acre-feet of System Conservation Water in Lake Mead (“CRIT Proposal”) in each of three years beginning January 1, 2020 and ending December 31, 2022 (“Fallowing Period”). CRIT will forego irrigation water deliveries and fallow approximately 10,000 acres of farmland in exchange for receiving from the Arizona System Conservation Fund (“Fund”) \$247.20 per acre-foot of water in 2020, with a 3% annual escalator, for up to 150,000 acre-feet conserved in Lake Mead and available to the Lower Colorado River System to maintain lake levels (“Project”).

The Arizona Department of Water Resources (“ADWR”), the U.S. Bureau of Reclamation (“Reclamation”), and the Central Arizona Water Conservation District (“CAWCD”) have entered an agreement setting forth the terms for CRIT’s creation of System Conservation Water in Lake Mead (“CRIT Agreement”). To fund the Project, the State of Arizona has appropriated \$30,000,000 in FY 2019/2020 for deposit into the Fund pursuant to Laws 2019, Chapter 1, Sec. 21. By separate agreement, Environmental Defense Fund, Inc. (“EDF”) has agreed to deposit a total of \$2,000,000 into the Fund by January 31, 2020 and use best efforts to raise an additional \$6,000,000 into the Fund no later than July 15, 2021.

In support of EDF’s efforts to raise funds for the CRIT Agreement, the National Audubon Society (“Audubon”) wishes to contribute \$200,000 to the Fund. This Agreement (“Audubon Funding Agreement”) is intended to describe Audubon’s contribution of monies to the Fund to assist in funding the Project during the Fallowing Period such that (1) CRIT receives compensation from the Fund in accordance with Section 8 of the CRIT Agreement and (2) monies contributed by Audubon are credited to EDF’s fundraising commitment.

I. **Key Terms:** The defined terms in the CRIT Agreement shall have the same meaning as those set forth in this Funding Agreement.

II. **Cost of Project:** The total cost for the conservation of 150,000 acre-feet of water in Lake Mead by CRIT is \$38,160,000, which includes \$160,000 of interest that will accrue in the Fund from monies contributed to the Fund for the purpose of funding the Project during the Fallowing Period.

III. **Financial Contributions by the State of Arizona:** To fund the Project, the State of Arizona has appropriated \$30,000,000 in FY 2019/2020 for deposit into the Fund pursuant to Laws 2019, Chapter 1, Sec. 21. These monies have been deposited by the State into the Fund. No other monies shall be deposited into the Fund by the State of Arizona to complete its obligation to CRIT pursuant to the CRIT Agreement. Interest accrued on the monies deposited into the Fund by the State of Arizona will accrue to the benefit of CRIT and will be paid to CRIT in accordance with the terms

of Section 8 of the CRIT Agreement up to the total amount of funding for CRIT to create 150,000 acre-feet of System Conservation Water. Any monies contributed by the State of Arizona that remain in the Fund after the final payment to CRIT shall accrue to the benefit of the State of Arizona.

IV. Financial Contributions by Audubon:

Audubon shall make financial contributions to the Fund according to the Table below:

Contributions	Due Date	Audubon Funds (on behalf of Intel Corporation)
Contribution 1	On or before January 31, 2021	\$ 200,000
TOTAL		\$ 200,000

Interest accrued on the monies deposited into the Fund by Audubon for the purpose of funding the Project will accrue to the benefit of CRIT and will be paid to CRIT in accordance with the terms of Section 8 of the CRIT Agreement.

V. Invoicing: ADWR will invoice Audubon for its \$200,000 contribution at least forty-five (45) days prior to the final due date listed in the table in Section IV herein.

VI. Payments to CRIT by ADWR: Payments from the Fund by ADWR to CRIT shall be made in accordance with the terms of the CRIT Agreement.

VII. Third-Party Beneficiary: CRIT is a third-party beneficiary to this Funding Agreement.

VIII. Miscellaneous:

- a) Each party to this agreement and its counsel have participated fully in the drafting, review, and revision of this agreement, each of whom is sophisticated in the matters to which this agreement pertains, and no one party shall be considered to have drafted this agreement.
- b) Neither party to this agreement shall assign nor subcontract this agreement or any of its rights or obligations hereunder without the prior written consent of the non-assigning party.
- c) No waiver or modification of any of the terms of this agreement shall be valid unless in writing and signed by both parties. No waiver by either party of a breach hereof or a default hereunder shall be deemed a waiver by such party of a subsequent breach or default of like or unlike or similar or dissimilar nature.
- d) If any term or provision of this agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining terms and

provisions shall not in any way be affected or impaired thereby and shall be valid and enforced to the fullest extent permitted by law.

- e) This agreement shall be governed by and construed in accordance with the laws of the State of Arizona without giving effect to any conflict of laws principles under Arizona law. Each party submits to the exclusive jurisdiction and venue of Arizona state court in any action or suit in connection with the agreement.
- f) This agreement, along with any schedules, exhibits or attachments hereto, contains the sole and entire agreement and understanding of the parties with respect to the subject matter hereof, superseding all prior communications whether written or oral.
- g) This agreement may be executed in one or more counterparts, but all of which together shall constitute one and the same instrument. This agreement may be executed by manual or facsimile signature, each of which shall be deemed an original.

IX. Effective Date: This Funding Agreement becomes effective upon the signing of this Agreement by ADWR and Audubon.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK, SIGNATURE PAGE TO FOLLOW]

ADWR and Audubon's signatures below indicate agreement with the terms of this Funding Agreement. This Funding Agreement may be signed in counterparts, each of which shall be an original.

Arizona Department of Water Resources:

By: 
Thomas Buschatzke

Its: Director

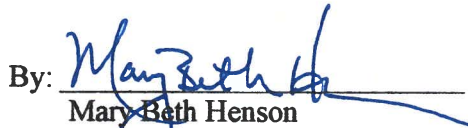
Dated: 5/21/2020

Approved as to form:

By: 
Kenneth C. Slowinski

Its: Chief Legal Counsel

National Audubon Society:

By: 
Mary Beth Henson

Its: Chief Financial Officer