



**AGENDA  
BIG BEND WATER DISTRICT  
BOARD OF TRUSTEES**

**SPECIAL MEETING  
9:00 A.M. – DECEMBER 4, 2018**

**COMMISSION CHAMBERS  
CLARK COUNTY GOVERNMENT CENTER  
500 S. GRAND CENTRAL PARKWAY, LAS VEGAS, NEVADA  
(702) 258-3100**

Board of Trustees  
Steve Sisolak, Chair  
Susan Brager, Vice Chair  
Larry Brown  
Jim Gibson  
Chris Giunchigliani  
Marilyn Kirkpatrick  
Lawrence Weekly

Date Posted: November 27, 2018

The Big Bend Water District makes reasonable efforts to assist and accommodate persons with physical disabilities who desire to attend the meeting. For assistance, call the Agenda Coordinator (702) 258-3939 at least 24 hours prior to the meeting.

**THIS MEETING HAS BEEN PROPERLY NOTICED AND POSTED IN THE FOLLOWING LOCATIONS:**

Clark County Government Center  
500 South Grand Central Parkway  
Las Vegas, Nevada

Las Vegas Valley Water District  
1001 S. Valley View Boulevard  
Las Vegas, Nevada

Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada

Regional Government Center  
101 Civic Way  
Laughlin, Nevada

Big Bend Water District  
1520 Thomas Edison Drive  
Laughlin, Nevada

Laughlin Library  
2840 Needles Highway  
Laughlin, Nevada

All items listed on this agenda are for action by the Board of Trustees, unless otherwise indicated. Items may be taken out of order. The Board of Trustees may combine two or more agenda items for consideration, and/or may remove an item from the agenda or delay discussions relating to an item on the agenda at any time.

Visit our website at [http://www.lvwd.com/apps/agenda/big\\_bend/index.cfm](http://www.lvwd.com/apps/agenda/big_bend/index.cfm) or main office at 1001 S. Valley View Boulevard, Las Vegas, Nevada for Big Bend Water District agenda postings, copies of supporting material and approved minutes. To receive meeting information, including supporting material, contact the BBWD Agenda Coordinator at (702) 258-3939 or [agendas@lvwd.com](mailto:agendas@lvwd.com).

**CALL TO ORDER**

**COMMENTS BY THE GENERAL PUBLIC**

**NO ACTION MAY BE TAKEN:** At this time, the Board of Trustees will hear general comments from the public on items listed on this agenda. If you wish to speak to the Board about items within its jurisdiction but not appearing on this agenda, you must wait until the "Comments by the General Public" period listed at the end of this agenda. Please limit your comments to three minutes or less.

**ITEM NO.**

1. *For Possible Action:* Approve agenda with the inclusion of tabled and/or reconsidered items, emergency items and/or deletion of items, and approve the minutes of the special meeting of June 5, 2018.

**CONSENT AGENDA Items 2 - 3 are routine and can be taken in one motion unless a Director requests that an item be taken separately.**

2. *For Possible Action:* Approve and authorize the General Manager to sign an amendment to the existing land-use agreement between the Bureau of Reclamation and the District allowing construction of a riverbank filtration well and appurtenances on Federal land.
3. *For Possible Action:* Approve and authorize the General Manager to sign a cooperative agreement among the Bureau of Reclamation, Clark County and the District that allows a service connection to the Clark County water main for Colorado River water use at Davis Dam and its facilities.

**BUSINESS AGENDA**

4. *For Possible Action:* Approve and authorize the General Manager to sign a right-of-entry authorization between the State of Nevada and the District to allow for temporary water discharge into the Colorado River.

## **AGENDA – LAS VEGAS VALLEY WATER DISTRICT BOARD OF DIRECTORS – DECEMBER 4, 2018**

5. *For Possible Action:* Approve a loan contract between the State of Nevada Division of Environmental Protection and the District to accept a Drinking Water State Revolving Fund principal forgiveness loan, in an amount not to exceed \$500,000, to support the construction of a riverbank filtration well.
6. *For Possible Action:* Accept the District's Annual Financial Report for the period ending June 30, 2018, and authorize its submission to the County Clerk and the Nevada Department of Taxation.

### **COMMENTS BY THE GENERAL PUBLIC**

NO ACTION MAY BE TAKEN: At this time, the Board of Trustees will hear general comments from the public on matters under the jurisdiction of the Big Bend Water District. Please limit your comments to three minutes or less.

**BIG BEND WATER DISTRICT  
BOARD OF TRUSTEES MEETING  
JUNE 5, 2018  
MINUTES**

CALL TO ORDER 9:12 a.m., Commission Chambers, Clark County Government Center,  
500 South Grand Central Parkway, Las Vegas, Nevada

TRUSTEES PRESENT Steve Sisolak, Chair  
Susan Brager, Vice Chair  
Larry Brown  
Chris Giunchigliani  
Marilyn Kirkpatrick  
Lawrence Weekly

TRUSTEES ABSENT Jim Gibson

STAFF PRESENT John Entsminger, Julie Wilcox, Dave Johnson, Greg Walch, Brian Thomas

Unless otherwise indicated, all members present voted in the affirmative.

**COMMENTS BY THE GENERAL PUBLIC**

*For full public comment visit [www.lvwd.com/apps/agenda/big\\_bend/index.cfm](http://www.lvwd.com/apps/agenda/big_bend/index.cfm)*

There were no speakers.

1. **Approve agenda with the inclusion of tabled and/or reconsidered items, emergency items and/or deletion of items, and approve the minutes of the special meetings of March 6, 2018, April 23, 2018, and May 21, 2018.**

FINAL ACTION: A motion was made by Trustee Brown to approve the meeting's agenda and minutes. The motion was approved.

2. **Approve a resolution authorizing the submission of a grant proposal to the Bureau of Reclamation's WaterSMART: Water and Energy Efficiency Grant Program in the amount of \$137,000 to support the installation of Advanced Meter Infrastructure, including a matching contribution of \$160,000.**

FINAL ACTION: A motion was made by Vice Chair Brager to approve staff's recommendation. The motion was approved.

**COMMENTS BY THE GENERAL PUBLIC**

*For full public comment visit [www.lvwd.com/apps/agenda/big\\_bend/index.cfm](http://www.lvwd.com/apps/agenda/big_bend/index.cfm)*

There were no speakers.

**Adjournment**

There being no further business to come before the Board, the meeting adjourned at 9:13 a.m.

APPROVED:

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Steve Sisolak, Chair

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John J. Entsminger, Secretary

Copies of all original agenda items and minutes, including all attachments, are on file in the General Manager's office at the Las Vegas Valley Water District, 1001 South Valley View Boulevard.

**BIG BEND WATER DISTRICT  
BOARD OF TRUSTEES  
AGENDA ITEM**

December 4, 2018

<b>Subject:</b> Amendment	<b>Director's Backup</b>
<b>Petitioner:</b> David L. Johnson, Deputy General Manager, Engineering/Operations	
<b>Recommendations:</b> That the Board of Trustees approve and authorize the General Manager to sign an amendment to the existing land-use agreement between the Bureau of Reclamation and the District allowing construction of a riverbank filtration well and appurtenances on Federal land.	

**Fiscal Impact:**

None by approval of the above recommendation.

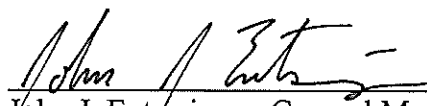
**Background:**

On March 5, 1991, the Bureau of Reclamation (Bureau) and the District entered into Contract No. 0-07-30-L0333, which provided temporary and permanent easements to the District for the construction, operation and maintenance of a raw water pump station and pipeline on Federal land. On March 6, 2018, the Board approved an assistance agreement between the Bureau and the District for funding to construct and equip a high-capacity well adjacent to the Colorado River that would employ riverbank filtration (RBF), a natural process proven effective in treating constituents of concern. Construction of the RBF well is intended to improve Laughlin's water quality and increase the reliability of its water system.

If approved, this Amendment to the Contract and Agreement for Raw Water Pump Station to Construct a New Underground Water Pipeline for Well Installation and Appurtenances will increase the size of the permanent easement, as shown on Attachment A, necessary for the construction, operation and maintenance of the RBF well and related pipelines by the District.

This action is authorized pursuant to Section 1(8) of the Las Vegas Valley Water District Act, Chapter 167, Statutes of Nevada 1947, and NRS 277.180. The office of the General Counsel has reviewed and approved this agreement.

Respectfully submitted:

  
\_\_\_\_\_  
John J. Entsminger, General Manager  
JJE:DLJ:CNP:AB:JPP:MR:lmv  
Attachments

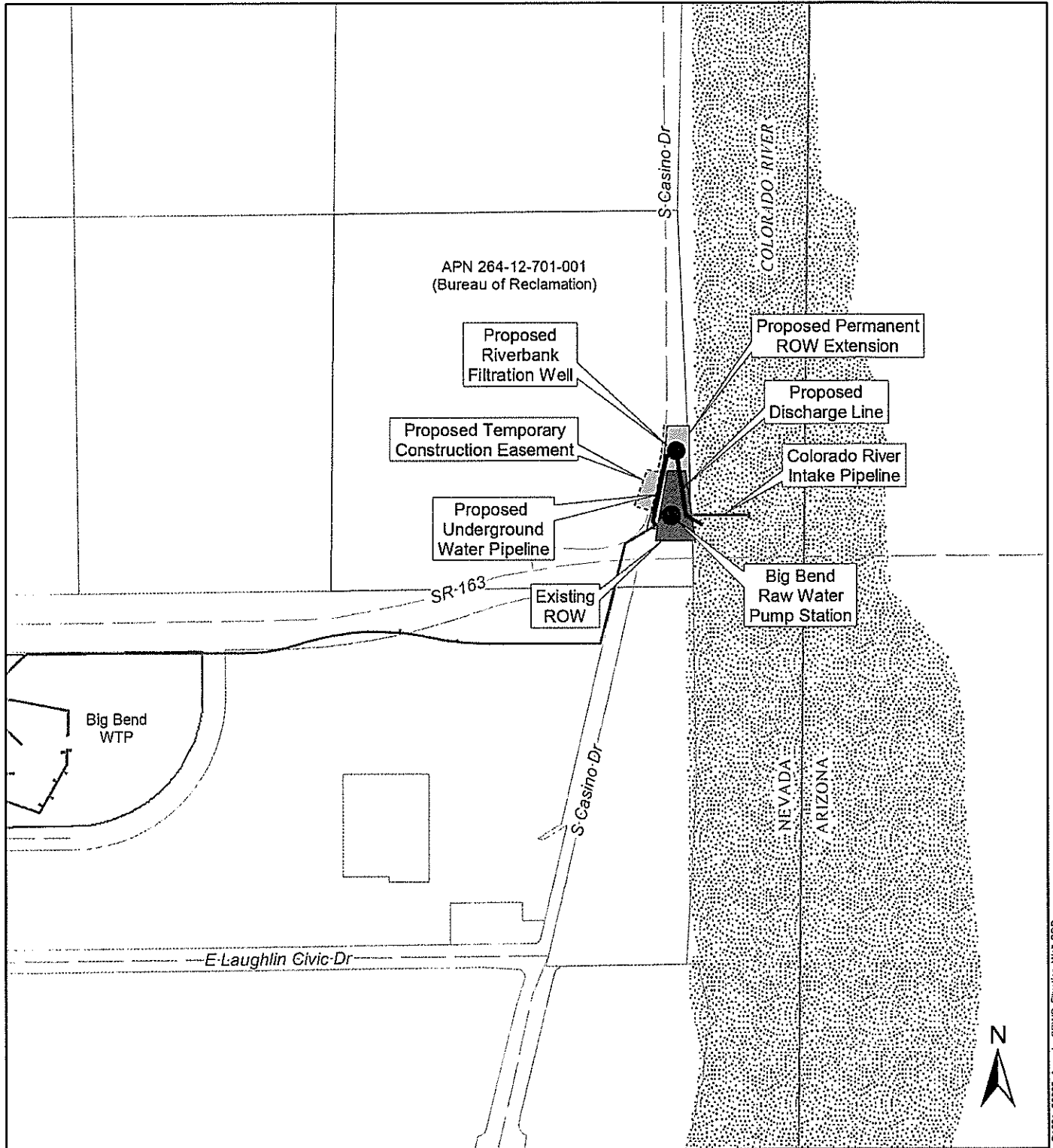
AGENDA  
ITEM #

2



BOARD OF TRUSTEES  
AGENDA ITEM  
December 4, 2018

AMENDMENT TO CONTRACT AND AGREEMENT  
FOR RAW WATER PUMP STATION TO CONSTRUCT  
A NEW UNDERGROUND WATER PIPELINE FOR  
WELL INSTALLATION AND RELATED PURPOSES



R1601\_30539\_Agenda\_BBWD\_Filtration\_Well BOR

**ORIGINAL**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
AND  
BIG BEND WATER DISTRICT

PARKER-DAVIS PROJECT

AMENDMENT TO CONTRACT AND AGREEMENT  
FOR RAW WATER PUMP STATION TO CONSTRUCT  
A NEW UNDERGROUND WATER PIPELINE  
FOR WELL INSTALLATION AND RELATED APPURTENANCES

1. THIS AMENDMENT NO. 1 is made this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory  
thereof or supplementary thereto, all of which acts are commonly known and referred to as the  
"Federal Reclamation Laws"; the Act of Congress of August 30, 1935 (Stat. 1028, 1035), as  
amended; pursuant to the Act of Congress approved August 4, 1939 (53 Stat. 1187), as  
amended August 18, 1950 (64 Stat. 463); and pursuant to the regulations found at 43 CFR 429,  
between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States,"  
represented by the officer executing this License, duly appointed successor, or authorized  
representative, hereinafter referred to as the "Authorized Officer," and Big Bend Water District, a  
general improvement district organized and existing under State of Nevada Revised Statutes,  
Chapter 318, hereinafter referred to as "BBWD," each of which is sometimes individually  
referred to as "Party," and sometimes collectively referred to as "Parties."

WITNESSETH THAT:

2. (a) WHEREAS, by letter dated April 16, 2018, the Las Vegas Valley Water  
District (LVVWD), on behalf of BBWD, requested an amendment to increase the permanent

1 facility easement originally granted by Contract No. 0-07-30-L0333, dated March 5, 1991, by  
2 0.47 acres and a temporary construction area of 0.22 acres, for construction of the new  
3 underground water pipeline for well installation and related appurtenances to be placed on  
4 Federal land, withdrawn by Reclamation in Laughlin, Nevada; and

5 (b) WHEREAS, the granting of an amendment to Contract  
6 No. 0-07-30-L0333 by the United States for an increase in the permanent easement and the  
7 construction of facilities referenced in 2(a) under the terms and conditions hereinafter provided  
8 will serve the public need and will be compatible with the purposes for which the land or interest  
9 in the land is being administered.

10 NOW THEREFORE, in consideration of the mutual covenants and conditions herein  
11 contained, the Parties agree as follows:

12 Subject to the conditions hereinafter set forth, the United States does hereby  
13 grant an amendment to the easement as described and depicted on the Exhibit, which is  
14 attached hereto and by this reference made a part hereof, and located on the following  
15 described land.

16 Mount Diablo Meridian, Clark County, Nevada

17 Township 32 South, Range 66 East  
18 section 12, E½SE¼ (within)  
19 portion of Lot 28  
20 comprising 0.47 acres, more or less

21 Township 32 South, Range 66 East  
22 section 12, E½SE¼ (within)  
23 portion of Lot 28  
24 temporary construction area comprising 0.22 acres, more or less

25 3. This action has been determined to be excluded from National Environmental  
26 Policy Act documentation by Categorical Exclusion No. LC-18-19, dated June 15, 2018.

1 4. All Federal, State, and local required permits and approvals shall be obtained  
2 prior to Reclamation's issuance of a Notice to Proceed for the project. Copies of all permits and  
3 approvals shall be provided to Reclamation. All drilling and construction activities will be in

1 accordance with Federal, state, and local laws, regulations, and codes.

2         5. If hazardous material is found or any construction or project associated spills of a  
3 gallon or more occurs, all operations will cease and local emergency response organizations  
4 shall be notified by calling 911. After calling 911, the Regional Hazardous Materials Coordinator  
5 shall be notified at 702-293-8130 within one hour after notifying 911. Construction or project  
6 associated spills less than one gallon must be cleaned up immediately and the Regional  
7 Hazardous Materials Coordinator notified within 24 hours of the spill. The Regional Hazardous  
8 Materials Coordinator shall be notified of any groundwater contamination found during the  
9 construction and/or testing of the filtration well.

10         6. Construction and maintenance activities that may affect vegetation will occur  
11 outside of the migratory bird breeding season (February 15 to September 1) to the maximum  
12 extent practicable. If construction and maintenance activities cannot occur outside February 15  
13 to September 1, a biologist, approved by Reclamation, will conduct nesting bird clearance  
14 surveys. If any nesting bird activity is detected, all activities will cease until the biologist  
15 determines that no active nests, eggs, nestlings, or recently fledged birds will be affected.

16  
17 To prevent the spread of noxious and invasive weeds, equipment used for this project shall be  
18 thoroughly cleaned prior to entering the project site. The cleaning process will ensure that all  
19 dirt and debris that may harbor noxious or invasive weeds seeds are removed and disposed of  
20 at an appropriate facility. Reclamation's *Inspection and Cleaning Manual for Equipment and*  
21 *Vehicles to Prevent the Spread of Invasive Species: 2012 Edition* should be referenced for  
22 inspection and cleaning activities. The manual can be found at:  
23 <http://www.usbr.gov/mussels/prevention/docs/EquipmentInspectionandCleaningManual2012.pdf>

24 If biological issues or questions arise prior to or during project implementation contact  
25 Reclamation's Biological Services Coordinator at 702-293-8130.

26         7. In the event of an unanticipated discovery, all operations in the area of the

1 discovery will cease and a Reclamation archaeologist contacted at 702-293-8130. "Discovery"  
2 means the encounter of any previously unidentified or incorrectly identified cultural resource  
3 including, but not limited to, archaeological deposits, human remains, or places reported to be  
4 associated with Native American religious beliefs and practices.

5 8. The parties agree that the temporary construction area granted herein to BBWD  
6 for construction purposes shall be in effect until 30 days following notice by BBWD to the United  
7 States of substantial completion of construction on lands covered in this Contract. Use of the  
8 temporary construction area by BBWD beyond this time shall require prior written authorization  
9 from the United States.

10 9. All other terms and conditions of Contract No. 0-07-30-L0333, dated  
11 March 5, 1991, as amended, shall remain in full force and effect.

12 IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 1 to be  
13 executed as of the day and year first above written.

14 THE UNITED STATES OF AMERICA

15  
16  
17 By: \_\_\_\_\_  
18 Chief, Resource Management Office  
19 Lower Colorado Region  
20 Bureau of Reclamation

21 LAS VEGAS VALLEY WATER DISTRICT  
22 ON BEHALF OF BIG BEND WATER DISTRICT

23  
24 Date: \_\_\_\_\_

25 By: John J. Entsminger

26 Title: General Manager

ACKNOWLEDGMENT

STATE OF NEVADA     )  
                                  ) ss.  
COUNTY OF CLARK    )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me,  
\_\_\_\_\_, A Notary Public in and for said County and State,  
personally appeared \_\_\_\_\_, Chief,  
Resource Management Office, Lower Colorado Region, Bureau of Reclamation, United States  
Department of the Interior, known to me to be the person described in the foregoing instrument,  
and acknowledged to me that they executed the same on behalf of the United States of America  
in the capacity therein stated and for the purpose therein contained.

\_\_\_\_\_  
Notary Public in and for the County of Clark,  
State of Nevada

My Commission Expires:

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me,  
\_\_\_\_\_, A Notary Public in and for said County and State,  
personally appeared

Name \_\_\_\_\_,

Title \_\_\_\_\_,

known to me to be the person described in the foregoing instrument, and acknowledged to me  
that he/she executed the same on behalf of

Name of Company \_\_\_\_\_,


in the capacity therein stated and for the purpose therein contained.

\_\_\_\_\_  
Notary Public in and for said County and State

My Commission Expires:



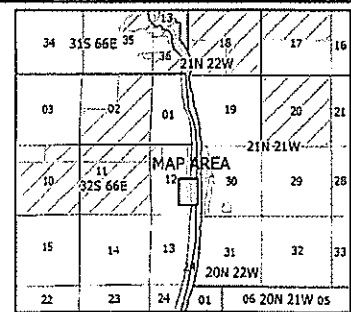
0-07-30-L0333  
Big Bend Water District  
Water Pipeline and Well Installation

 BOR Land (Withdrawn)

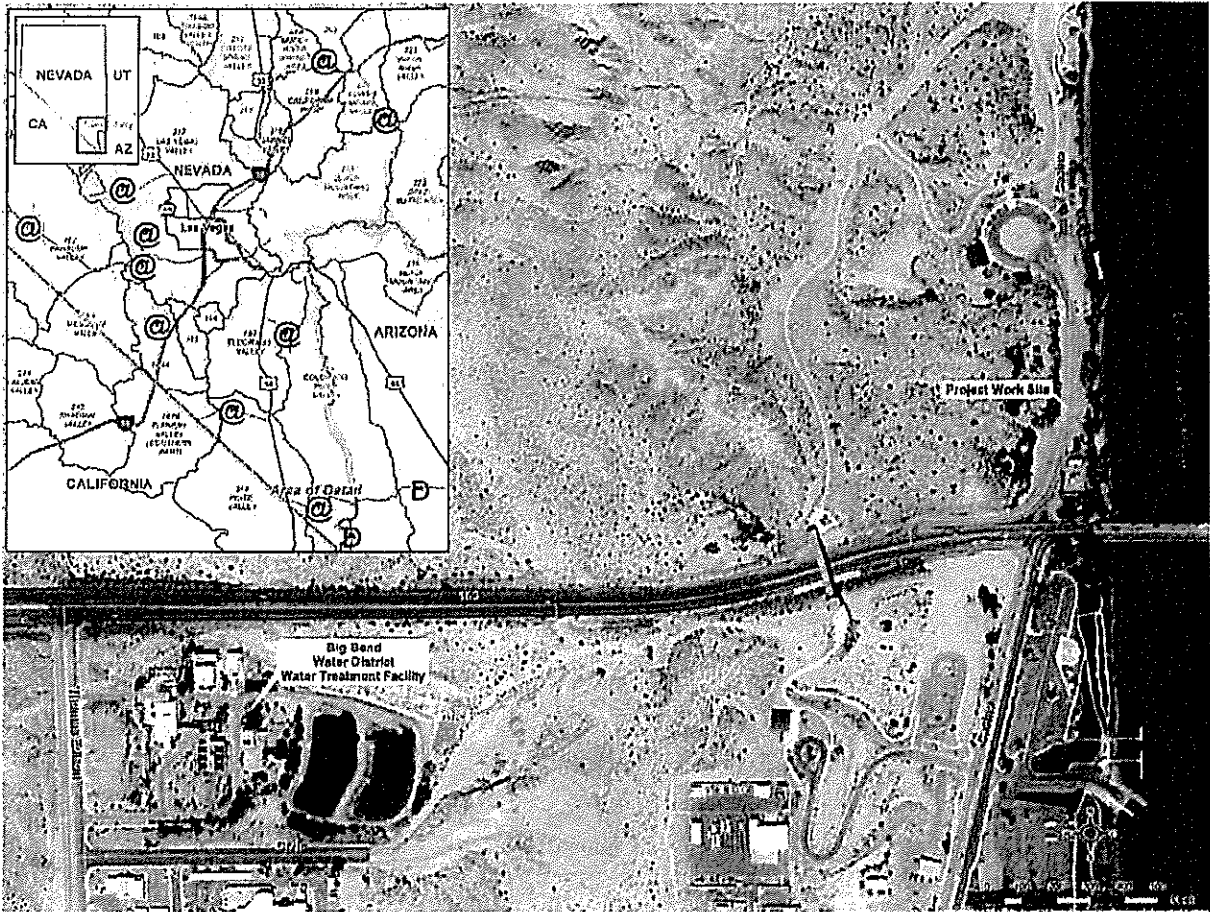
**RECLAMATION**  
Managing Water in the West



0 50 100 200 300 Feet  
Scale: 1:2,560





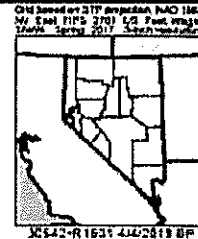
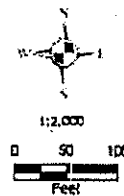




**Legend**

- |  |  |   |
|--|--|---|
| Existing Surface Water Intake for Big Bend Water Pumping Station | Temporary Road Closure to General Public | Proposed Temporary Construction Area (1.22 Ac.)                                   |
| Proposed Riverbank Filtration Well                               | NDOT Right-of-Way                        | Proposed Permanent Extension of Existing Right-of-Way (1.47 Ac.)                  |
| Proposed Temporary Discharge Area                                | Hydrant Access Route During Construction | Existing Big Bend Water Pumping Station Right-of-Way (Contract No. 0-07-30-L0333) |
| Hydrant (Existing Potable Water)                                 | Temporary Discharge Pipe                 |   |
|  | Future Permanent Water Pipeline          |   |

\*Approximate acreage and dimensions



**BIG BEND WATER DISTRICT  
BOARD OF TRUSTEES  
AGENDA ITEM**

December 4, 2018

<b>Subject:</b> Agreement	
<b>Petitioner:</b> David L. Johnson, Deputy General Manager, Engineering/Operations	
<b>Recommendations:</b> That the Board of Trustees approve and authorize the General Manager to sign a cooperative agreement among the Bureau of Reclamation, Clark County and the District that allows a service connection to the Clark County water main for Colorado River water use at Davis Dam and its facilities.	

**Fiscal Impact:**

None by approval of the above recommendation.

**Background:**

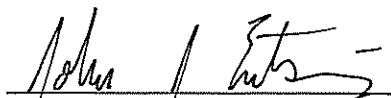
The District currently diverts, treats and delivers Colorado River water to Clark County (County) at Heritage Greenway Park and Trails (Heritage Park) for use in the Pyramid Canyon Day Use Area (Pyramid Canyon). Pyramid Canyon is located on Bureau of Reclamation (Reclamation) land. The County maintains over one and a half miles of pipeline within Heritage Park and Pyramid Canyon. Davis Dam (Dam) is adjacent to and north of Pyramid Canyon. Reclamation currently diverts water for domestic use at the Dam and its facilities by pumping Colorado River water from Lake Mojave and treating that water inside the Dam's power plant. Reclamation has requested connection to the County pipeline in order to provide water for use at the Dam and its facilities located in the State of Arizona.

Reclamation has Colorado River water entitlements for its water use at the Dam. Water use by Reclamation at the Dam under this Agreement would be diverted by the District in the State of Nevada and consumptively used and accounted for by Reclamation in the State of Arizona. Reclamation would be charged and billed monthly for its water use at the applicable District rate.

If approved, the attached cooperative agreement provides the terms and conditions for the design, installation and construction of water facilities necessary for this service connection. This agreement also outlines the roles and responsibilities of each party related to delivery, treatment, billing and measurement of the diverted water.

This agreement is being entered into pursuant to NRS 277.180. The office of the General Counsel has reviewed and approved the agreement.

Respectfully submitted:

  
\_\_\_\_\_  
John J. Entsminger, General Manager  
JJE:DLJ:TDF:CNP:ke  
Attachments

AGENDA ITEM #
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3

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

AGREEMENT WITH BIG BEND WATER DISTRICT AND CLARK COUNTY TO ALLOW  
FOR A SERVICE CONNECTION TO THE CLARK COUNTY WATER MAIN FOR  
COLORADO RIVER WATER USE AT DAVIS DAM AND ITS FACILITIES

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

AGREEMENT WITH BIG BEND WATER DISTRICT AND CLARK COUNTY TO ALLOW  
FOR A SERVICE CONNECTION TO THE CLARK COUNTY WATER MAIN FOR  
COLORADO RIVER WATER USE AT DAVIS DAM AND ITS FACILITIES

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	Exhibit A – Map of the Clark County Pipeline and Point of Delivery for Water Service to Heritage Park and the Reclamation Connection	
	Exhibit B – Big Bend Water District Contract	
	Exhibit C – Reclamation Purpose License Agreement No. 06-07-30-L0614, and Reclamation Purpose License Agreement No. 06-07-30-L0614, Amendment No.1 (Collectively, License Agreement)	
	Exhibit D – Map of Heritage Park	
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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

AGREEMENT WITH THE BIG BEND WATER DISTRICT AND CLARK COUNTY TO  
ALLOW FOR A SERVICE CONNECTION TO THE CLARK COUNTY WATER MAIN  
FOR COLORADO RIVER WATER USE AT DAVIS DAM AND ITS FACILITIES

1. PREAMBLE: THIS AGREEMENT NO. 15-XX-30-W0581, hereinafter called "Agreement," made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2018, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of 1928 (43 U.S.C. § 617, et seq.); the Reclamation Project Act of August 4, 1939 (53 Stat. 1187); the Treaty between the United States of America and Mexico, Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed on February 3, 1944 (59 Stat. 1219) (Mexican Water Treaty); and Consolidate Parker Dam Power Project and Davis Dam Project enacted May 28, 1954 (68 Stat. 143), all of which are commonly known and referred to as Federal Reclamation Law, among the UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, hereinafter referred to as, "Reclamation;" the BIG BEND WATER DISTRICT, a general improvement district and political subdivision of the State of Nevada, hereinafter referred to as "BBWD," with its principal place of business in Clark County, Nevada; and CLARK COUNTY, a county created, organized, and existing under and by virtue of the laws of the State of Nevada, hereinafter referred to as "Clark County"; Reclamation, BBWD, and Clark County, are each individually sometimes hereinafter called "Party" and sometimes collectively called "Parties";

WITNESSETH THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, Clark County owns a pipeline located within the Colorado River Heritage Greenway Park and Trails (Heritage Park) in the State of Nevada, as shown in Exhibit A, attached hereto;

2.2 WHEREAS, the pipeline is considered a private water system and provides potable Colorado River water to the Pyramid Canyon Day Use Area located within Heritage Park;

2.3 WHEREAS, the Pyramid Canyon Day Use Area is on Reclamation land that Clark County uses under Reclamation Recreation Purpose License Agreement Nos. 06-07-30-L0614 and 06-07-30-L0614, as amended (collectively, License Agreement);

2.4 WHEREAS, Reclamation desires to connect to the portion of the Clark County pipeline that is located in the Pyramid Canyon Day Use Area of Heritage Park in order to provide Colorado River water for use at Davis Dam and its facilities located in the State of Arizona;

2.5 WHEREAS, Reclamation has a Colorado River water Entitlement for an annual diversion of up to 100 acre-feet under Secretarial Reservation dated November 29, 2000, as part of the State of Arizona's second-priority category, for Domestic Use at Davis Dam and its facilities;

2.6 WHEREAS, Reclamation also has a Colorado River water Entitlement for an annual diversion of up to 300 acre-feet under Secretarial Reservation dated November 9, 1998, for Domestic Use in Nevada at Federal facilities or on Federal lands adjacent to the Colorado River (Nevada Secretarial Reservation);

2.7 WHEREAS, under the License Agreement Clark County may use up to 50 acre-feet per year of the Colorado River water on Federal land under the Nevada Secretarial Reservation for the existing and/or future expanded Heritage Park facilities;

2.8 WHEREAS, the License Agreement provides for the future expansion of Heritage Park facilities if requested by Clark County and approved by Reclamation;

2.9 WHEREAS, currently Reclamation diverts Colorado River water for Domestic Use at Davis Dam and its facilities by pumping Colorado River water from Lake Mohave to the Davis Dam water tank pursuant to the November 29, 2000 Secretarial Reservation;

2.10 WHEREAS, currently Reclamation treats the Colorado River water with a water treatment system located inside the Davis Dam power plant;

2.11 WHEREAS, Reclamation's connection to Clark County's pipeline would create a private service connection and would be sub-metered to accurately account for Reclamation's and Clark County's water consumption respectively;

2.12 WHEREAS, BBWD generally does not allow for expansion of on-site private water systems to serve adjacent parcels. However, the Parties' have agreed that, in the best interests of the public, BBWD is willing to waive its standard regulations and allow Reclamation to connect to the Clark County's private water system, subject to the terms and conditions of this Agreement;

2.13 WHEREAS, Clark County, as the owner of the existing pipeline, by execution of this Agreement, consents to Reclamation constructing a new connection to its existing pipeline in order to provide service to Davis Dam and its facilities, which will extend from the Clark County pipeline in Pyramid Canyon Day Use Area to the northerly boundary of the Pyramid Canyon Day Use Area adjoining Davis Dam;

2.14 WHEREAS, pursuant to the Amendatory, Supplementary, and Restating Contract No. 2-07-30-W0269, Amendment No. 1, with BBWD, Nevada, For The Delivery of Colorado River Water, dated August 19, 1993 (BBWD Contract), which is shown in Exhibit B attached herein, BBWD currently diverts, treats, and delivers Colorado River water to Heritage Park;

2.15 WHEREAS, the Colorado River water for use at Davis Dam and its facilities will be diverted by BBWD in the State of Nevada, consumptively used by Reclamation in the State of Arizona for Domestic Use at Davis Dam and its facilities, and will continue to be accounted for under the State of Arizona's annual Colorado River water apportionment in accordance with



Reclamation's Secretarial Reservation dated November 29, 2000, as provided in the Consolidated Decree and described in Section 12 of this Agreement;

2.16 WHEREAS, all return flow to the Colorado River System will be determined by accounting methods acceptable by the Contracting Officer and shall be credited to the State of Arizona;

2.17 WHEREAS, Reclamation has consulted with the Nevada Division of Environmental Protection (NDEP), and NDEP has determined that Heritage Park is not classified as a public water system as defined in N.R.S. 445A and therefore not regulated by NDEP;

2.18 WHEREAS, Reclamation has consulted with the Arizona Department of Environmental Quality (ADEQ), and ADEQ has determined that Davis Dam and its facilities would not be classified as a public water system, nor would it be regulated by ADEQ;

2.19 WHEREAS, Reclamation has consulted with the Arizona Department of Water Resources (ADWR), and ADWR by letter dated September 10, 2018, indicates its concurrence with this Agreement;

2.20 WHEREAS, Reclamation has consulted with the Colorado River Commission of Nevada (CRCN), and CRCN by letter dated September 5, 2018, indicates its concurrence with this Agreement;

2.21 WHEREAS, Reclamation has complied with the National Environmental Policy Act of 1969, as amended, by completing Categorical Exclusion No. LC-16-13, for this action;

2.22 WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform and therefore the Parties are authorized to enter this into this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

3. DEFINITIONS: For the purpose of this Agreement, the following definitions shall apply:

3.1 BBWD Service Rules means the Big Bend Water District Service Rules dated as of July 1, 2010, as may be amended from time to time.

3.2 Clark County Service Connection means the point of connection between the BBWD water system and Clark County's on-site private water system, at which the BBWD loses its authority and control over the water.

3.3 Colorado River Aquifer is the aquifer that consists of permeable, partly saturated sediments and sedimentary rocks that are hydraulically connected to the Colorado River so that water can move between the Colorado River and the aquifer in response to withdrawal of water from the aquifer or differences in water level elevations between the Colorado River and the aquifer.

3.4 Consolidated Decree means the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona v. California, et al.*, entered March 27, 2006, 547 U.S. 150 (2006), or as it may be further modified.

3.5 Consumptive Use shall have the same meaning as defined in the Consolidated Decree.

3.6 Contracting Officer means the Secretary or a duly authorized representative. Unless otherwise directed by the Secretary, the Regional Director, Bureau of Reclamation, Boulder City, Nevada, shall be the Contracting Officer.

3.7 Domestic Use shall have the same meaning as defined in the Consolidated Decree.

3.8 Entitlement means authorization to beneficially use Mainstream Water pursuant to (i) a decreed right as described in the Consolidated Decree, (ii) a contract with the United States through the Secretary, or (iii) a Secretarial Reservation of Mainstream Water.

3.9 Exhibit A is a map of Clark County's Service Connection which is the point of delivery for water service through Clark County's pipeline to Heritage Park, and the Reclamation Connection and pipeline for Domestic Use water service at Davis Dam and its facilities. Exhibit A is attached hereto and by this reference made a part hereof.

3.10 Exhibit B is a copy of the BBWD Contract. Exhibit B is attached hereto and by this reference made a part hereof.

3.11 Exhibit C is a copy of the Reclamation Recreation Purpose License Agreement No. 06-07-30-L0614, dated December 16, 2009, and Reclamation Recreation Purpose License Agreement No. 03-07-30-L0614, Amendment No.1, dated November 5, 2010, between Clark County and Reclamation (collectively, License Agreement). Exhibit C is attached hereto and by this reference made a part hereof.

3.14 Exhibit D is a copy of Reclamation's Secretarial Reservation dated November 29, 2000, for up to 100 acre-feet per year of Colorado River water for use at Davis Dam and its facilities. Exhibit D is attached hereto and by this reference made a part hereof.

3.15 Mainstream Water shall have the same meaning as defined in the Consolidated Decree.

3.16 Private Connection means a service connection or main extension connected to an existing water pipeline and appurtenances not owned by BBWD or Clark County after completion.

3.17 Reclamation Connection means the connection to Clark County's private water system located at the northerly boundary of the Pyramid Canyon Day Use Area, and indicated in Exhibit A.

3.18 Return Flow Water means Mainstream Water that has been diverted or pumped and which flows or percolates back to the Colorado River or the Colorado River Aquifer and is available for use in the United States or in satisfaction of the Mexican Treaty Obligation in a manner approved by the Contracting Officer.

3.19 Secretary means the Secretary of the Interior or a duly authorized representative.

3.20 Secretarial Reservation means water rights created by the Secretary, by the reservation of Mainstream Water for the use of Federal establishments under Federal law.

3.21 Uncontrollable Force is any cause beyond the control of the Party affected. Uncontrollable forces shall include, but are not necessarily limited to, drought, facilities failure,

flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have been reasonably expected to avoid.

3.22 Water Facilities means all related infrastructure included in the Reclamation Connection. Water Facilities include but is not limited to: the lateral pipe to deliver the water, a water meter, a water meter box or vault, valves, thrust restraints, backflow prevention assembly, and other appurtenances.

4. PURPOSE OF AGREEMENT: This Agreement is to provide for the terms and conditions governing the Reclamation Connection including construction and installation of Water Facilities to effect delivery of Reclamation's annual Entitlement to Colorado River water under Secretarial Reservation dated November 29, 2000, for Domestic Use at Davis Dam and its facilities in the State of Arizona.

5. TERM OF AGREEMENT: This Agreement becomes effective upon its execution by the Parties and remains in effect until it is amended or terminated in writing by the Parties.

6. RECLAMATION CONNECTION:

6.1 Reclamation will prepare plans for construction and installation of a Private Connection known as the Reclamation Connection (Plans) which shall include the size and location of the Water Facilities.

6.2 BBWD will provide hydraulic grade line data to Reclamation for the Clark County Service Connection for use by Reclamation for design of the Reclamation Connection. BBWD will not provide any such analysis for the pipeline between the Clark County Service Connection and the Reclamation Connection.

6.3 The Reclamation Connection will be installed at nominal right angles to the Clark County pipeline. The water meter will be located within the Pyramid Canyon Day Use Area of Heritage Park outside of the main roadway, and in an area accessible to all Parties to facilitate the

performance of operation, maintenance, and replacement responsibilities. The water meter will be protected from vehicular traffic on the Pyramid Canyon Day Use Area driveway.

6.4 Ownership:

6.4.1 The Reclamation Connection and Water Facilities will remain the property of Reclamation. Reclamation will be responsible for performing any necessary maintenance and repair of the Water Facilities or cause such maintenance and repair to be performed. During any such maintenance and/or repair, Reclamation shall not interfere with the water flow or use of the water by Clark County.

6.4.2 Reclamation shall perform or cause to be performed by a licensed technician, annual testing of the backflow prevention assembly.

6.4.3 Reclamation will provide to BBWD and Clark County the results of each test of the backflow assembly, as well as a record of any repairs performed by Reclamation for BBWD's records.

7. INSTALLATION OF SERVICE CONNECTION AND WATER FACILITIES:

7.1 Applicability:

7.1.1 Reclamation will, at its sole cost and expense, construct and install the Reclamation Connection and Water Facilities. The work will comply with the requirements of this Section 7.

7.2 Plan Review:

7.2.1 Reclamation will submit Plans to Clark County for review prior to the time the work is started. Plans will be submitted to Clark County electronically, in both AutoCAD (dwg) and Adobe (pdf) formats, configured for D size (24" X 36") sheets, with the portion of the service connection located within the boundaries of the Pyramid Canyon Day Use Area of Heritage Park depicted at a scale not to exceed 1" = 60'.

7.2.2 The Plans will clearly indicate the size and location of the existing pipeline and appurtenances in the vicinity of the proposed connection, as well as the size and location of

other known existing utilities and the boundary of the Pyramid Canyon Day Use Area of Heritage Park.

7.2.3 Clark County will review the Plans, provide comment, if any, on the Plans and return the Plans to Reclamation electronically. Reclamation will submit updated Plans, if necessary, to Clark County with mutually acceptable changes addressing the desired revisions. The cost incurred by Clark County to review and comment on the Plans will be non-reimbursable.

7.3 Time Limitations:

7.3.1 Approval of the Plans by Clark County shall be valid for the time indicated by Clark County upon approval. In the event that construction of the Reclamation Connection is not started within two (2) years from the date of approval, this Agreement shall terminate.

7.3.2 Reclamation agrees to complete construction of the Reclamation Connection within the boundary of the Pyramid Canyon Day Use Area of Heritage Park within two (2) years from the date of Plan approval. If substantial work, as determined by Clark County, has commenced, but is not completed in the two (2) year period, Reclamation may request a time extension of one (1) year, in which case no additional fees will be assessed by Clark County or BBWD, if applicable.

7.4 Water Facility Installation:

7.4.1 Inspection – Clark County shall inspect the installation of the Reclamation Connection and, if applicable, associated backflow prevention assembly in the Pyramid Canyon Day Use Area from commencement of construction through completion as Clark County deems necessary. Clark County may decline to provide service if the work does not comply with Clark County's requirements until all facilities related to the connection and associated backflow prevention assembly in the Pyramid Canyon Day Use Area, as shown on the approved Plans, have been determined acceptable by Clark County. The cost of inspection performed by Clark County will be non-reimbursable.

7.4.2 Water Meter Installation – BBWD will provide to Reclamation, at Reclamation’s cost, a water meter for installation by Reclamation. The water meter must be installed and payment for the water meter made by Reclamation to BBWD in accordance with Section 19.2 before any water is delivered through the Reclamation Connection.

7.4.3 Backflow Prevention Assembly – If applicable, Reclamation will purchase and install any backflow prevention assemblies.

8. WATER QUALITY: BBWD does not control and makes no guarantees regarding the quality of water delivered through a private water system. Reclamation acknowledges and agrees that BBWD makes no representations or warranty regarding the quantity or quality of water that is delivered.

9. DIVERSION AND DELIVERY OF COLORADO RIVER WATER:

9.1 BBWD shall divert at the point of diversion as shown in Exhibit B of the BBWD Contract, up to 100 acre-feet per year of Colorado River water to be treated and delivered at the points of delivery as shown in Exhibit A, attached hereto, to Reclamation for Domestic Use at Davis Dam and its facilities.

9.2 The Colorado River water that is diverted by BBWD and delivered to the Reclamation Connection is accounted for against Reclamation’s Entitlement to Colorado River water under Secretarial Reservation dated November 29, 2000, for use at Davis Dam and its facilities.

10. HERITAGE PARK:

10.1 Clark County may request to expand the Heritage Park facilities in the future. Reclamation may approve expansion of such facilities in accordance with the License Agreement.

10.2 Existing Water Facilities may not accommodate increased water demands at Heritage Park and will be evaluated at the time of any proposal for expansion or redevelopment by Clark County.

10.3 If Clark County decides to expand the Heritage Park facilities and if Reclamation's use of Clark County's private water system diminishes Clark County's ability to meet the increased water demands at Heritage Park, Reclamation will pay for a portion of the costs to increase the size of the water facilities in proportion to Reclamation's water use at Davis Dam.

10.4 The costs to increase the size of the private water system to meet the increased demand of the Heritage Park facilities will be agreed upon by Reclamation and Clark County through a separate agreement.

10.5 Reclamation's construction of the Reclamation Connection will not restrict Clark County from using up to 50 acre-feet per year of Colorado River water under the Nevada Secretarial Reservation.

11. MONITORING AND REPORTING OF COLORADO RIVER WATER USE:

11.1 The Colorado River water use at Davis Dam and its facilities is minimal compared to current demands for water in BBWD; therefore, Reclamation will not be required to submit to BBWD a monthly or annual delivery schedule for Davis Dam.

11.2 Nothing in this Agreement changes or alters any provision of the BBWD Contract or the BBWD Service Rules.

11.3 BBWD agrees to include the Reclamation diversions at the Reclamation Connection in the monthly reporting requirements consistent with Section 10(a) of the BBWD Contract.

11.4 Reclamation will provide BBWD access to the water meter located at the Reclamation Connection for the purposes of obtaining monthly meter readings.

11.5 BBWD will read Reclamation's water meter approximately once per month and will bill Reclamation for the water used in accordance with Section 19 of this Agreement.

11.6 On or before the 10th day of each month, Davis Dam Facility Manager will submit to the Contracting Officer, with a copy to BBWD, Clark County, ADWR and CRCN, a complete written report showing the amount of Colorado River water delivered to Reclamation for use at



Davis Dam and its facilities during the previous month, or as otherwise determined by the Contracting Officer.

12. WATER ACCOUNTING: The Consolidated Decree, in I. (K), states, “Consumptive use of water diverted in one State for consumptive use in another State shall be treated as if diverted in the State for whose benefit it is consumed”; therefore, the Contracting Officer will continue to account for Reclamation’s Colorado River water for Domestic Use at Davis Dam and its facilities in the annual *Colorado River Accounting and Water Use Report: Arizona, California, and Nevada* in the State of Arizona under “Bureau of Reclamation – Davis Dam Diversion” as it is currently listed.

13. MEASUREMENT OF COLORADO RIVER WATER: BBWD will measure Colorado River water use approximately once per month at the point of delivery in Exhibit A, attached hereto. To correctly determine and report BBWD’s Colorado River water use, Reclamation will, consistent with Section 11 of this Agreement, deduct the annual amount of water diverted at the point of delivery in Exhibit A, attached hereto, from the data provided pursuant to Section 10(a) of the BBWD Contract.

14. RETURN FLOW WATER: This Contract permits Davis Dam to receive Mainstream Water diverted by BBWD up to the maximum annual diversion amount as shown in Exhibit D, attached hereto. Any Return Flow Water returned to the Colorado River does not permit BBWD, on behalf of Davis Dam, to make additional diversions of Mainstream Water. Return Flows will be credited to the State of Arizona.

15. REPORTING OF RETURN FLOW WATER: Reclamation staff at Davis Dam shall maintain a monthly record of Return Flow Water and, on or before the 10th day of each month, Davis Dam shall submit to the Contracting Officer, with a copy to ADWR, a complete written report showing the amount of Return Flow Water for the preceding month, unless otherwise directed by the Contracting Officer.

16. QUALITY OF RETURN FLOW WATER:

16.1 Davis Dam shall comply with all applicable Federal and State of Arizona water quality laws, regulations, codes, and standards.

16.2 Davis Dam obtained the required Arizona Pollutant Discharge Elimination System Permit from the ADEQ in accordance with A.R.S. § 49 -255.01.

17. MEASUREMENT OF RETURN FLOW WATER:

17.1 All Return Flow Water shall be measured at the points of return by measuring devices or shall be determined by other methods of accounting acceptable to the Contracting Officer.

17.2 All Return Flow Water that migrates outside the exterior boundaries of Davis Dam and its facilities in lieu of being collected shall be estimated by the Contracting Officer in consultation with Davis Dam and ADWR.

18. ROLES AND RESPONSIBILITIES:

18.1 BBWD will treat and convey potable water to Clark County at the Clark County Service Connection consistent with applicable Federal and State water quality laws, regulations, codes, and standards.

18.2 BBWD will install automatic metering infrastructure (AMI) at the Reclamation Connection to collect consumption data for billing purposes.

18.3 Clark County and Reclamation will provide to BBWD unobstructed access to the water facilities, as they are described herein, to allow BBWD to collect manual meter reads should the AMI fail for any reason and to maintain the AMI.

18.4 Clark County will operate, maintain, and replace, subject to available funding, its portion of the pipeline used to convey water from the Clark County Service Connection to the Reclamation Connection, as shown in Exhibit A, attached hereto. If funding is not immediately

available, Clark County will exercise due diligence to obtain necessary funding for operation, maintenance, and any necessary replacement.

18.5 Reclamation will operate, maintain, and replace Davis Dam's portion of the pipeline used to convey water to Davis Dam and its facilities, as shown in Exhibit A, attached hereto.

18.6 If use of Clark County's pipeline by Reclamation directly results in any additional legal obligations by Clark County to comply with permits, such as additional monitoring, Reclamation shall be responsible to complete those requirements at its expense. Only measures and expenses that Clark County and Reclamation agree, constitute legal obligations arising from Reclamation's use of Clark County's pipeline, will be undertaken by Reclamation and expenses incurred by Clark County as a result of Clark County's use of the pipeline shall not be Reclamation's responsibility to reimburse.

19. PAYMENTS:

19.1 Payment For Water Meter:

19.1.1 Reclamation will purchase a water meter at Reclamation's cost.

19.2 Payment For Monthly Water Service Fees:

19.2.1 Following receipt of an invoice of the actual costs for the diversion, treatment, and delivery of Reclamation's Colorado River water entitlement to Davis Dam and its facilities, and after approval of the invoice by the Contracting Officer, the Davis Dam Facility Manager will pay BBWD for said costs.

19.2.2 Payments for the monthly water service fees shall be submitted to the Davis Dam Manager and paid by credit card.

19.2.3 Payment for water used by Davis Dam from the time of installation of the Water Facilities shall be the responsibility of Reclamation and will be charged and billed monthly at the applicable BBWD water rate. BBWD's water rate may be modified periodically without

the need to amend this Agreement. The revised BBWD water rate will be provided to Reclamation in writing 30 days before the rate changes.

19.3 If the invoice amount for the monthly water service rate provided by BBWD to Reclamation is estimated to exceed the amount that can be paid by credit card (currently \$10,000), payment will be made through the appropriate procurement process in accordance with the Federal Acquisition Regulation.

19.4 All payments from Davis Dam to BBWD are due within 30 days of the date of the invoice.

20. DELINQUENT PAYMENTS: Reclamation is a Federal agency and shall not be assessed late fees or interest by BBWD.

21. EFFECT OF WAIVER OF BREACH OF AGREEMENT: All rights of action for breach of any of the provisions of this Agreement are reserved to each Party as provided by appropriate law. The waiver of a breach of any of the provisions of this Agreement shall not be deemed to be a waiver of any other provision hereof, or any other subsequent breach of any provisions hereof. BBWD's consent to enter into this Agreement is not, and shall not be deemed to be, a waiver of any terms or conditions of the BBWD Service Rules except to the extent set forth herein. However, Reclamation and BBWD shall not bring claims or causes of action against Clark County directly, solely arising from Reclamation or BBWD's use of the Clark County pipeline.

22. WATER AND AIR POLLUTION CONTROL: The Parties, in carrying out the provisions of this Agreement, shall comply with all applicable water and air pollution laws and regulations of the United States and the States of Arizona and Nevada, and local authorities.

23. UNFORESEEN CIRCUMSTANCES:

23.1 During the term of this Agreement, the Parties recognize that there will be unforeseen circumstances that may affect the operational capability to deliver Colorado River water.

23.2 BBWD and/or Clark County may restrict or discontinue Colorado River water delivery by notice to Reclamation in the event of capacity limitations or scheduled or emergency outages, until normal conditions are restored.

23.3 The Parties agree to work together during these periods to develop solutions to resolve the unforeseen circumstance.

24. DISPUTES: The Parties shall first attempt to resolve any dispute relating to this Agreement through a meeting(s) of the Parties. A Party requesting resolution of a dispute shall send written notice to the other Parties, which shall set forth in detail the position of the Party requesting resolution. If such meetings are unsuccessful in resolving such dispute, then any Party may exercise its remedies under Section 32.

25. NOTICES: Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the Parties to this Agreement when actually received, as shown by certified mail receipt of receipt of a nationally-recognized courier service at the following addresses:

25.1 Regional Director  
Lower Colorado Region  
Bureau of Reclamation  
Attention: LC-4400  
P.O. Box 61470  
Boulder City, NV 89006

25.2. General Manager  
Big Bend Water District  
5857 Flamingo Road  
Las Vegas, NV 89119

25.3 Director  
Clark County  
Real Property Management  
500 S. Grand Central Parkway  
Las Vegas, NV 89155

25.4 Davis Dam Facility Manager  
Bureau of Reclamation  
Attention: LCD-D10  
Davis Dam Field Division  
Bullhead City, AZ 86429

25.5 The designation of the addressee or the address may be changed by notice given in the same manner as provided in this section for other notices.

26. TERMINATION: Reclamation reserves the right to terminate this Agreement by written notice to BBWD and Clark County if the rate charged by BBWD exceeds Davis Dam's ability to pay. Reclamation may terminate this Agreement by giving one (1) year's written notice to BBWD

and Clark County. If this Agreement is terminated pursuant to this article, BBWD hereby covenants and agrees to hold Reclamation harmless from any claims, damages, or alleged causes of action claimed to have resulted from such action. Furthermore, BBWD will immediately disconnect Reclamation's Service Connection from the Clark County pipeline upon termination of this Agreement.

27. BOOKS, RECORDS, AND REPORTS: Subject to applicable Federal laws and regulations, each Party shall have the right during normal office hours to examine and make copies of the other Party's books and records relating to matters covered by this Agreement.

28. RULES, REGULATIONS, AND DETERMINATIONS:

28.1 The Parties agree that the delivery of Colorado River water or the use of Federal facilities pursuant to this Agreement is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary under Federal reclamation law.

28.2 The Contracting Officer shall have the right to make determinations necessary to administer this Agreement that are consistent with its provisions, the laws of the United States and the State(s) of Arizona and Nevada, and the rules and regulations promulgated by the Secretary. Such determinations shall be made in consultation with BBWD and Clark County.

29. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS: The Parties agree that actions taken pursuant to this contract are subject to Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d) and all other applicable Federal civil rights laws and regulations.

30. OFFICIALS NOT TO BENEFIT: No member of or delegate to Congress, Resident Commissioner, or official of BBWD, Clark County, or Reclamation shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

31. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS: The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States if funds are not appropriated or allotted. In the absence of appropriated or allotted funds, BBWD and Clark County shall not be obligated to continue to perform the work provided herein.
32. UNCONTROLLABLE FORCES: Neither Party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of an Uncontrollable Force. Any Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove such inability with all reasonable dispatch.
33. ASSIGNMENT LIMITED-SUCCESSORS AND ASSIGNS OBLIGATED: The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or interest therein by any Party shall be valid until approved in writing by the other Parties.
34. REMEDIES UNDER AGREEMENT NOT EXCLUSIVE: Nothing in this Agreement shall be construed in any manner to abridge, limit, or deprive either Party of any means to enforce any remedy either at law or in equity for the breach of any provisions hereof, or of any other remedy which it would otherwise have.
35. EXHIBITS MADE PART OF THIS AGREEMENT: Initial Exhibits A through D are attached hereto and made a part hereof, and each shall be in full force and effect in accordance with its respective provisions until superseded and replaced by a subsequent exhibit executed by the Parties.
36. AGREEMENT DRAFTING CONSIDERATIONS: This Agreement has been negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this

Agreement pertains. Articles 1 through 35 of this Agreement have been drafted, negotiated, and reviewed by the Parties, and no one party shall be considered to have drafted the stated articles.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year set forth in Section 1 of this Agreement.

Approved as to Legal Sufficiency:

**THE UNITED STATES OF AMERICA**

By: \_\_\_\_\_

Attorney-Advisor  
Intermountain Region  
Office of the Solicitor

By: \_\_\_\_\_

Regional Director  
Lower Colorado Region  
Bureau of Reclamation

ATTEST:

**BIG BEND WATER DISTRICT**

By: Julie Jiddymat

Title: Director of Legal Services

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

**CLARK COUNTY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

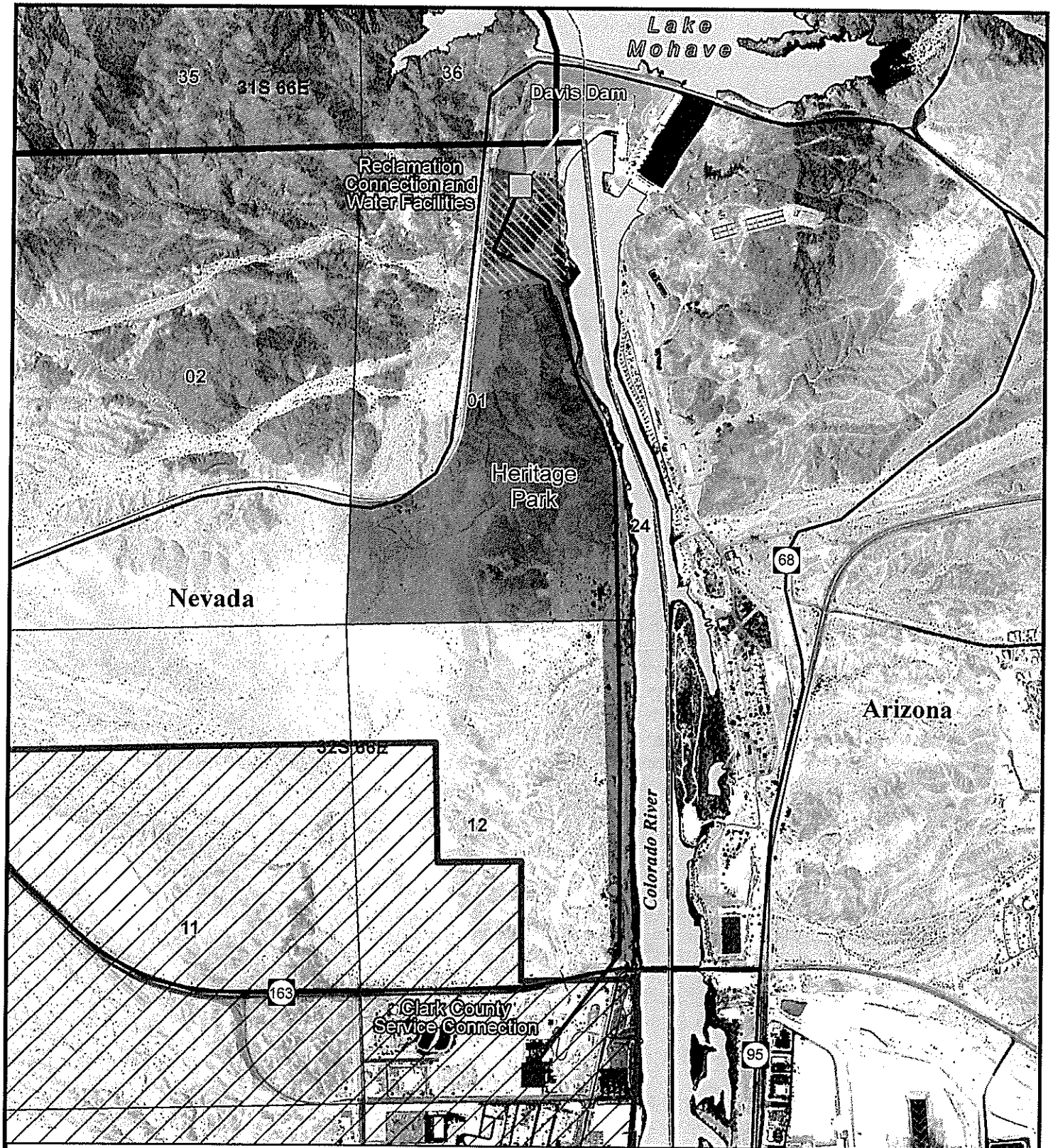
By: \_\_\_\_\_

Title: \_\_\_\_\_



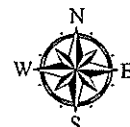
**MAP OF THE POINTS OF DELIVERY FOR CLARK COUNTY AND RECLAMATION**

1. This Exhibit A, made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, to be effective under and as a part of Agreement No. 15-XX-30-W0581, hereinafter called "Exhibit A," shall become effective on the date of the Exhibit A's execution and shall remain in effect until superseded by another Exhibit A executed by the Parties; Provided, That this Exhibit A or any superseding Exhibit A shall terminate with termination of the Agreement.
2. The following map depicts: (1) the Clark County Service Connection and (2) the Reclamation Connection and Water Facilities.
3. Davis Dam shall provide additional information on all points of delivery and all point(s) of return when requested by the Contracting Officer.



- Pyramid Canyon Day-Use Area
- Big Bend Water District
- Section Line
- Township Line
- State Boundary
- Clark County Pipeline
- Davis Dam Pipeline
- Major Road

Sources:  
 Heritage Park and Pyramid Canyon Day-Use Area - Reclamation featureclass  
 Big Bend Water District Boundary - 2014 Reclamation Contracts geodatabase  
 Points of Delivery and Pipelines: Agreement No. 15-XX-30-W0581 Exhibit A  
 Imagery 2017 1m NAIP



0 0.25 0.5  
 Mile

**RECLAMATION**  
*Managing Water in the West*

Exhibit B  
Agreement No. 15-XX-30-W0581  
Davis Dam

**BIG BEND WATER DISTRICT AMENDATORY, SUPPLEMENTARY, AND  
RESTATING CONTRACT, AMENDMENT NO. 1**

1. A copy of the Amendatory, Supplementary, and Restating Contract No. 2-07-30-W0269, Amendment No. 1, with Big Bend Water District, Nevada, For the Delivery of Colorado River Water, dated August 19, 1993, is attached.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

AMENDATORY, SUPPLEMENTARY, AND RESTATING  
CONTRACT WITH  
THE BIG BEND WATER DISTRICT, NEVADA, FOR  
THE DELIVERY OF COLORADO RIVER WATER

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

AMENDATORY, SUPPLEMENTARY, AND RESTATING  
CONTRACT WITH  
THE BIG BEND WATER DISTRICT, NEVADA, FOR  
THE DELIVERY OF COLORADO RIVER WATER

Preamble

1. This Contract, made effective this 19th day of August, 1993 ("Effective Date"), pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as Reclamation law, and particularly the Act of Congress approved December 21, 1928 (45 Stat. 1057), and acts amendatory thereof or supplementary thereto, hereinafter collectively referred to as the "Boulder Canyon Project Act," Reclamation Regulations as herein defined, and the Independent Appropriations Act of September 13, 1983 (96 Stat. 1051), among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," acting for this purpose through the Secretary of the Interior; the State of Nevada and its COLORADO RIVER COMMISSION, hereinafter referred to as the "Commission," said Commission acting in the name of the State of Nevada but as principal in its own behalf as well as in behalf of the State of Nevada; the term "State" as used in this Contract shall mean both the State of Nevada and its Commission; and the BIG BEND WATER DISTRICT, a general improvement district and political subdivision of the State of Nevada, hereinafter referred to as the "District," with its principal place of business in Clark County, Nevada.

1 WITNESSETH THAT:

2 Explanatory Recitals

3 2. (a) WHEREAS, for the purpose of controlling floods, improving  
4 navigation, regulating the flow of the Colorado River, and providing for storage  
5 and delivery of stored water for the reclamation of public lands and other  
6 beneficial uses exclusively within the United States, the Secretary of the  
7 Interior, acting under and in pursuance of the provisions of the Colorado River  
8 Compact and the Boulder Canyon Project Act, has constructed and is now operating  
9 and maintaining in the mainstream of the Colorado River at Black Canyon that  
10 certain structure known as and designated Hoover Dam and incidental works,  
11 creating thereby a reservoir designated Lake Mead; and

12 (b) WHEREAS, the Boulder Canyon Project Act provides, among other  
13 things, that the Secretary of the Interior, under such general regulations as he  
14 may prescribe, may contract for the storage of water in Lake Mead and for the  
15 delivery of such water at such points on the river as may be agreed upon for  
16 irrigation and domestic uses, and said Act provides further that no person shall  
17 have, or be entitled to have, the use for any purpose of the water stored as  
18 aforesaid except by contract made as therein stated; and

19 (c) WHEREAS, by contract dated March 30, 1942, as amended, hereinafter  
20 referred to as the "1942 Contract," between the United States and the State, the  
21 United States agreed, subject to the provisions of said 1942 Contract, to deliver  
22 for use in Nevada: (i) So much water as may be necessary to supply the State  
23 a total quantity not to exceed the State's 300,000 acre-foot per year  
24 apportionment, exclusively for irrigation and domestic use within the State; and  
25 (ii) Four percent (4%) of any excess or surplus water determined to be available  
26 for use in the Lower Colorado River Basin in Arizona, California, and Nevada

1 under the Boulder Canyon Project Act and the Supreme Court Decree in Arizona v.  
2 California, et al.; and

3 (d) WHEREAS, the Supreme Court of the United States in its opinion of  
4 June 3, 1963, in Arizona v. California, et al., 373 U.S. 546, and its decree in  
5 that case entered March 9, 1964, 376 U.S. 340, provided that Colorado River water  
6 shall be released or delivered to water users in Arizona, California, and Nevada  
7 only pursuant to valid contracts therefor made with such users by the Secretary  
8 of the Interior, and said Decree provides further that consumptive use from the  
9 mainstream of the Colorado River within a state shall include all consumptive  
10 uses of water of the mainstream, including water drawn from the mainstream by  
11 underground pumping; and

12 (e) WHEREAS, pursuant to an amendatory and supplementary contract for  
13 the delivery of water between the United States and the State dated November 8,  
14 1983, the Commission was authorized to enter into subcontracts for up to  
15 10,000 acre-feet per year of Colorado River water for the delivery of domestic  
16 use in certain specified service areas; and

17 (f) WHEREAS, pursuant to the authority of said 1983 contract, the  
18 Commission and the District executed a water user contract dated November 9,  
19 1983, for the delivery to the District of up to 10,000 acre-feet per year of  
20 Colorado River water; and

21 (g) WHEREAS, the parties to this Contract, based in part upon the  
22 Commission's recommendation embodied in its July 29, 1991, Resolution 91-2,  
23 desire to execute this water delivery contract among the United States, the  
24 Commission, and the District to create a direct contractual relationship between  
25 the United States and the District with respect to delivery of Colorado River  
26 water to the District; and



1 (h) WHEREAS, the District is authorized under the laws of the State  
2 to furnish water for domestic use within its lawful service area and is  
3 authorized to contract with the United States for a supply of water for such  
4 purposes; and

5 (i) WHEREAS, the United States has adopted the State's recommendation  
6 and is willing to enter into a water delivery contract with the Commission and  
7 the District; and

8 (j) WHEREAS, the parties desire to amend, supplement, and restate the  
9 Big Bend Water District's water delivery contract, Contract No. 2-07-30-W0269,  
10 to facilitate performance under a ground-water banking agreement involving the  
11 Cities of Boulder City, Henderson, and North Las Vegas, the Big Bend Water  
12 District, and the Las Vegas Valley Water District, and to facilitate other  
13 exchanges among the purveyors within the Southern Nevada Water Authority.

14 NOW, THEREFORE, in consideration of the mutual covenants herein contained,  
15 the parties hereto agree as follows:

16 Original Contract Superseded

17 3. This Contract supersedes the November 9, 1983, and March 2, 1992,  
18 contract for delivery of Colorado River water. However, if ever relevant for any  
19 purpose, the District's rights shall be deemed to have commenced as of the date  
20 of the November 9, 1983, contract.

21 Definitions

22 4. When used herein, unless otherwise distinctly expressed or manifestly  
23 incompatible with the intent hereof, the term:

24 (a) "Colorado River Compact" or "Compact" shall mean the compact or  
25 agreement signed at Santa Fe, New Mexico, on November 24, 1922, pursuant to an  
26 Act of Congress approved August 19, 1921 (42 Stat. 171), which Compact was

1 approved in section 13(a) of the Boulder Canyon Project Act.

2 (b) "Contracting Officer" shall mean the Secretary of the Interior,  
3 a duly appointed successor, or an authorized representative acting pursuant to  
4 this Contract or applicable Reclamation law or regulation.

5 (c) "Decree" shall mean the Decree of the Supreme Court of the  
6 United States in the case of Arizona v. California, et al., entered March 9,  
7 1964, 376 U.S. 340, as now issued, including the Court's Supplemental Decree,  
8 entered January 9, 1979, 439 U.S. 419, amended April 16, 1984, 466 U.S. 144, or  
9 as may be further modified.

10 (d) "Domestic Use" shall mean the use of water for household, stock,  
11 municipal, mining, milling, industrial (including electrical power generation),  
12 and other like purposes, but shall exclude the generation of hydroelectric power.

13 (e) "Entitlement" shall mean the right to the delivery and use of  
14 Colorado River water for a beneficial use existing under the Decree, a  
15 Secretarial Reservation, Federal statutes, a water delivery contract with the  
16 Secretary of the Interior executed pursuant to Federal law, or a Commission Water  
17 User Contract.

18 (f) "Griffith Project" shall mean the Robert B. Griffith Water Project  
19 facilities constructed pursuant to the Act of October 22, 1965 (79 Stat. 1068),  
20 as amended on July 19, 1966 (80 Stat. 312).

21 (g) "Mainstream" shall mean the mainstream of the Colorado River  
22 downstream from Lee Ferry within the United States, including the reservoirs  
23 thereon.

24 (h) "Mexican Water Treaty" shall mean Executive A, Seventy-eighth  
25 Congress, second session, a treaty between the United States and the United  
26 Mexican States, signed at Washington, D.C., on February 3, 1944, relating to the

1 utilization of the waters of the Colorado River and Tijuana River and of the Rio  
2 Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H,  
3 Seventy-eighth Congress, second session, a protocol signed at Washington, D.C.,  
4 on November 14, 1944, supplementary to the treaty.

5 (i) "Reclamation Regulations" shall mean any regulations adopted by  
6 the Secretary of the Interior for administering Entitlements to Colorado River  
7 water or operating the Colorado River in the Lower Colorado River Basin in  
8 Arizona, California, and Nevada.

9 (j) "Secretary" shall mean the Secretary of the Interior, a duly  
10 appointed successor, or an authorized representative acting pursuant to any  
11 authority of the Secretary and through any agency of the Department of the  
12 Interior.

13 (k) "Year" shall mean calendar year, unless otherwise designated by  
14 the Contracting Officer.

15 Delivery of Water by the United States

16 5. (a) Subject to the terms, conditions, and provisions of this Contract,  
17 and insofar as reasonable diligence will permit, the United States shall, from  
18 storage available in Lake Mead, deliver to the District such quantities of water  
19 as may be determined to be reasonably required for beneficial use by the District  
20 within the limitations hereinafter specified and to the extent such water is  
21 available for delivery in Nevada within Clark County. Water delivered outside  
22 Clark County, Nevada, for purposes of storage or exchange, pursuant to agreements  
23 approved by the Contracting Officer, shall be deemed in compliance with the  
24 provisions of this subarticle. Contingent upon compliance with the provisions  
25 of this Contract, the District shall have a right to the delivery of  
26 Colorado River water not to exceed ten thousand (10,000) acre-feet per Year.

1 (b) Water delivered pursuant to this Contract shall be diverted at  
2 those points of diversion listed in Exhibit A, attached hereto and made a part  
3 hereof, at the Griffith Project intake structure, the Mohave Generating Station  
4 intake structure, diversion points approved for the use of the City of  
5 Boulder City, and at additional points of diversion approved by the  
6 Contracting Officer in writing, including wells finally determined to be drawing  
7 Colorado River water and requested by the District as diversion points.

8 (c) The Contracting Officer may increase the amount of Colorado River  
9 water delivered to the District pursuant to subarticle (a) whenever: (i) water  
10 drawn from a well located in the District's service area is finally determined  
11 to be Colorado River water; (ii) the well meets the criteria specified in  
12 subarticle (d); and (iii) the Contracting Officer determines that such water  
13 should be delivered to the user by the District pursuant to this Contract rather  
14 than pursuant to a Federal water delivery contract directly with the user. The  
15 maximum annual quantity of water which the Contracting Officer may deliver with  
16 respect to any such well shall be the amount of water drawn from such well and  
17 placed to beneficial use in any Year within the five- (5-) year period  
18 immediately preceding the Effective Date of this Contract. If the  
19 Contracting Officer determines to increase deliveries to the District pursuant  
20 to this subarticle, he shall give the District written notice of his  
21 determination specifying the basis of his determination and the amount by which  
22 the District's subarticle (a) Entitlement is to be increased. If the District  
23 agrees to deliver such water to the user in accordance with the  
24 Contracting Officer's notice, the District shall give the Contracting Officer  
25 written notice to such effect. Thereafter, the District's subarticle (a)  
26 Entitlement shall be deemed to have been increased by the quantity specified in

1 the Contracting Officer's notice.

2 (d) The criteria required by paragraph (c)(ii) to be satisfied are the  
3 following: (i) prior to the Effective Date of this Contract and continuing until  
4 the date the well is finally determined to be drawing Colorado River water, the  
5 well shall have had a valid permit or certificate issued by the Nevada State  
6 Engineer; and (ii) the water covered by the permit or certificate shall have been  
7 placed to beneficial use within the five- (5-) year period preceding the  
8 Effective Date of this Contract.

9 (e) For the purposes of this article, a final determination that a  
10 well is drawing Colorado River water shall be deemed to have been made when:

11 (i) The Contracting Officer, in consultation with the State,  
12 makes a written determination to that effect and gives the Southern Nevada Water  
13 Authority and the District written notice of such determination;

14 (ii) Any timely administrative appeal from such determination  
15 has been decided; and

16 (iii) The decision in any timely action seeking judicial review  
17 of such determination has become final.

18 (f) The Secretary, on behalf of the United States, acknowledges that  
19 the District has an interest in any determination made by the Secretary regarding  
20 any specific well or wells covered by subarticle (c), and the Secretary will not  
21 object to the standing of the District to initiate or intervene in any  
22 administrative or judicial proceeding regarding any such determination. The  
23 District does not acknowledge that the Secretary's determination under this  
24 article of whether a well in Nevada is drawing Colorado River water is entitled  
25 to deference or to any presumption of validity in any judicial proceeding  
26 challenging that determination or otherwise involving the issue of whether the

1 | water drawn from such well is in fact Colorado River water.

2 |         (g) The United States reserves the right to temporarily discontinue  
3 | or reduce the amount of water to be delivered hereunder whenever such  
4 | discontinuance or reduction is made necessary for purposes of investigations,  
5 | inspections, replacements, maintenance, or repairs to any works whatsoever  
6 | affecting, utilized in or, in the opinion of the Contracting Officer, necessary  
7 | for delivery of water hereunder, it being understood that so far as feasible the  
8 | United States will give reasonable notice in advance of such temporary  
9 | discontinuance or reduction.

10 |         (h) No water shall be made available to the District pursuant to this  
11 | Contract during any period in which the District is in arrears for more than six  
12 | (6) months in the payment of any charges due the United States.

13 |         (i) The obligation of the United States to deliver water under this  
14 | Contract is subject to:

15 |                 (1) The availability of such water for use in Nevada under the  
16 | provisions of the Colorado River Compact, the Boulder Canyon Project Act, the  
17 | 1942 Contract, and the Decree;

18 |                 (2) The Mexican Water Treaty; and

19 |                 (3) The express understanding and agreement by the District that  
20 | this Contract is subject to the condition that Hoover Dam and Lake Mead will be  
21 | used: first, for river regulation, improvement of navigation, and flood control;  
22 | second, for irrigation and Domestic Use and satisfaction of present perfected  
23 | rights in pursuance of article VIII of the Colorado River Compact; and third, for  
24 | power; and furthermore, that this Contract is made upon the express condition and  
25 | with the express covenant that all rights hereunder shall be subject to and  
26 | controlled by the Colorado River Compact and that the United States, the

1 Commission, and the District shall observe and be subject to and controlled by  
2 said Colorado River Compact and Boulder Canyon Project Act in the construction,  
3 management, and operation of Hoover Dam, Lake Mead, canals, and other works, and  
4 the storage, diversion, delivery, and use of water to be delivered to the  
5 District.

6 (4) The condition that whenever, as determined by the Secretary  
7 in compliance with the Decree, insufficient Mainstream water is available for  
8 release to satisfy the State's 300,000 acre-foot per year apportionment,  
9 deliveries of water shall be made under this Contract, and under contracts with  
10 others who have contracted or who may hereafter contract with the United States  
11 for delivery of water from the Mainstream of the Colorado River under the  
12 Boulder Canyon Project Act or other applicable Federal statute for use in Nevada,  
13 in accordance with the following priorities, shortages to be borne in the inverse  
14 order of priorities:

15 First Priority: Satisfaction of present perfected rights, as defined and  
16 provided for in the Decree.

17 Second Priority: Satisfaction of the perfected right (in addition to the  
18 present perfected right) of the United States for the  
19 Lake Mead National Recreation Area in annual quantities  
20 reasonably necessary to fulfill the purposes of the  
21 recreation area, with a priority date of April 25, 1930, as  
22 provided in the Decree.

23 Third Priority: Satisfaction of the requirements of the City of Boulder City,  
24 Nevada, to the extent authorized in the Act of September 2,  
25 1958 (72 Stat. 1726), with a priority date of May 15, 1931,  
26 and as provided in the Decree.

1 Fourth Priority: Satisfaction of rights to the delivery of water under:

2 (i) The Contract for Delivery of Water to Basic  
3 Management, Inc., No. 14-06-300-2083, dated September 18,  
4 1969, entered into among the Secretary, the Commission,  
5 and Basic Management, Inc., as amended by the Contract to  
6 Amend Contract No. 14-06-300-2083, Amendment No. 1,  
7 dated May 22, 1990.

8 (ii) Contract No. 0-07-30-W0246, dated May 22, 1990,  
9 with the City of Henderson, Nevada. The right to the  
10 delivery of water under Contract No. 0-07-30-W0246 is  
11 co-equal in priority to the right to the delivery of  
12 water under the contracts described in  
13 sub-subparagraph (i) of this priority.

14 Fifth Priority: Satisfaction of rights to the delivery of water under:

15 (i) Contract No. 14-06-300-1523, dated February 12,  
16 1965, assigned to Lakeview Company, for an annual  
17 diversion Entitlement of 120 acre-feet of Colorado River  
18 water, currently reduced to zero (0) acre-feet per Year.

19 (ii) Contract No. 5-07-30-W0089, dated April 9, 1965,  
20 assigned to Pacific Coast Building Products, Inc., for an  
21 annual diversion Entitlement of 928 acre-feet of  
22 Colorado River water.

23 Sixth Priority: Satisfaction of rights to the delivery of water under  
24 Contract No. 14-06-300-2130, Amendment No. 1, dated March 2,  
25 1992, among the Secretary, the Commission, and the Las Vegas  
26 Valley Water District for an annual diversion Entitlement of



1 15,407 acre-feet of Colorado River water.

2 Seventh Priority: Satisfaction of rights to the delivery of water under:

3 (i) A Secretarial Reservation to be made for an annual  
4 diversion Entitlement of up to 300 acre-feet of  
5 Colorado River water to be used in Nevada at Federal  
6 facilities or on Federal lands adjacent to the  
7 Colorado River.

8 (ii) Contract No. 14-06-300-2405, dated October 18,  
9 1972, among the Secretary, the Commission, and the Nevada  
10 Department of Wildlife for an annual consumptive use  
11 Entitlement of 25 acre-feet of Colorado River water.

12 (iii) Contract No. 9-07-30-W0011, dated November 8,  
13 1978, among the Secretary, the Commission, and the Boy  
14 Scouts of America for an annual diversion Entitlement of  
15 10 acre-feet of Colorado River water.

16 (iv) A Commission Water User Contract between the  
17 Commission and the United States, for and in behalf of  
18 the United States Air Force, Contract  
19 No. F26600-78-D0011, dated January 23, 1978, for an  
20 annual diversion Entitlement of 4,000 acre-feet of  
21 Colorado River water. This contract was entered into  
22 pursuant to the contract described in  
23 sub-subparagraph (i) of the Eighth Priority.

24 Eighth Priority: Satisfaction of rights to the delivery of water under:

25 (i) Contract No. 7-07-30-W0004, Amendment No. 1, dated  
26 March 2, 1992, between the Secretary and the Commission

1 for an annual diversion Entitlement of 299,000 acre-feet  
2 of Colorado River water (which includes the  
3 4,000 acre-feet described in sub-subparagraph [iv] of the  
4 Seventh Priority) plus system losses not to exceed  
5 9,000 acre-feet per Year.

6 (ii) This Contract No. 2-07-30-W0269, dated March 2,  
7 1992.

8 (iii) Contract No. 2-07-30-W0266, dated March 2, 1992,  
9 among the Secretary, the Commission, and the Southern  
10 Nevada Water Authority for the remainder of Nevada's  
11 apportionment and surplus Entitlement for use in Nevada.

12 (iv) Any contract for a well drawing Colorado River  
13 water executed by the Contracting Officer as described in  
14 article 22 of said Contract No. 2-07-30-W0266.

15 Shortages shall be borne by each contractor described in this  
16 Eighth Priority in the same proportion as its water delivery  
17 Entitlement, without regard to shortages, bears to the  
18 aggregate water delivery Entitlements of all such contractors  
19 without regard to shortages. If, however, a shortage-sharing  
20 agreement is entered into between two or more of such  
21 contractors, then the aggregate shortage to be borne by all  
22 parties to such agreement, as calculated in accordance with  
23 the next preceding sentence, shall be shared among the  
24 parties as provided in the agreement.

25 Ninth Priority: Satisfaction of rights to the delivery of water arising after  
26 the Effective Date of this Contract under contracts for the

1 delivery of Colorado River water entered into with the  
2 Secretary, or otherwise, except the contracts described in  
3 sub-subparagraph (iv) of the Eighth Priority.

4 (j) Subject to the terms, conditions, and provisions set forth herein,  
5 this Contract is for permanent service.

6 (k) Delivery of water by the United States under this Contract shall  
7 discharge, to that extent, the obligation of the United States to deliver water  
8 to the State under the 1942 Contract.

9 Use of Water by the District

10 6. Unless otherwise authorized in writing by the Contracting Officer,  
11 water delivered under this Contract shall be put exclusively to beneficial  
12 Domestic Use within Clark County, Nevada. Water delivered outside of  
13 Clark County, Nevada, for purposes of storage or exchange, pursuant to agreements  
14 approved by the Contracting Officer, shall be deemed in compliance with the  
15 provisions of this article.

16 Scheduling of Water Deliveries

17 7. (a) At least sixty (60) days prior to the beginning of each Year or  
18 as otherwise reasonably required by the Contracting Officer, the District shall  
19 provide an annual water order to the Contracting Officer and the Commission which  
20 shall include a monthly schedule of the amount of Colorado River water it will  
21 divert from all points of diversion, by point of diversion. The District shall  
22 submit in writing such additional information respecting the quantities of water  
23 to be diverted at each diversion point and the rate and frequency of such  
24 diversions as the Contracting Officer may reasonably require.

25 (b) The District shall promptly amend its annual water order whenever  
26 the District determines that it can divert and put to beneficial use a quantity

1 of water different than that previously specified in an annual water order or  
2 amended annual water order.

3 (c) The diversion by the District from the Mainstream of the  
4 Colorado River during any Year of: (i) any water not previously ordered pursuant  
5 to this article; or (ii) any water in excess of the maximum quantity of water  
6 which the District is entitled to divert hereunder shall be deemed a material  
7 breach of this Contract.

8 Receipt of Water by the District

9 8. The District shall receive the water delivered to it hereunder by the  
10 United States at the points of delivery established pursuant to subarticle 5(b)  
11 and shall perform all acts required by law in order to maintain control over such  
12 water and to secure and maintain its lawful use and proper diversion. If  
13 necessary, the District shall install and maintain, or cause to be installed and  
14 maintained, at its own cost and in such manner as shall be satisfactory to the  
15 Contracting Officer, all turnouts, gates, checks, pumps, pipelines, equipment,  
16 and appurtenances of whatever nature necessary to divert the water delivered to  
17 it by the United States into facilities of, or used by, the District. The  
18 diversion and conveyance of such water thereto shall be without expense to or  
19 obligation of the United States, regardless of any fluctuation, for whatever  
20 reason, in the water surface elevation of the Colorado River or any related  
21 storage system. If necessary, the District shall, at its own cost and without  
22 expense to the United States, obtain or cause to be obtained all necessary  
23 rights-of-way required for said diversion and conveyance of water. Where  
24 rights-of-way across land of the United States are required by the District for  
25 said diversion and conveyance, application therefor will be acted upon by the  
26 United States pursuant to then applicable law.

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1 Contracting Officer may cause the repairs to be made and the cost thereof shall  
2 be paid by the District within thirty (30) days following receipt of a bill  
3 therefor.

4 Books, Records, and Reports

5 10. (a) The District shall maintain a weekly record of water diversions  
6 and, to the extent practicable, return flows and shall, on or before the fifth  
7 (5th) day of each month or as otherwise reasonably required by the  
8 Contracting Officer, make full and complete written reports to the  
9 Contracting Officer and the Commission on forms to be approved by or designated  
10 and supplied by the Contracting Officer, and by the tenth (10th) day of each  
11 January, or as otherwise reasonably required by the Contracting Officer, make  
12 full and complete written reports to the Contracting Officer and the Commission  
13 on forms to be approved by or designated and supplied by the Contracting Officer  
14 for said purpose as to all Colorado River water delivered to or diverted by the  
15 District hereunder and the water returned during the preceding Year or other  
16 reporting period if so established.

17 (b) The District shall establish and maintain accounts and other books  
18 and records pertaining to administration of the terms and conditions of this  
19 Contract, including: the District's financial transactions; water supply data;  
20 project operation; maintenance and replacement logs; project land and  
21 right-of-way use agreements; the water user's land-use (statistical data),  
22 landownership, land-leasing and water-use data; and other relevant matters that  
23 the Contracting Officer or the Commission may require. Reports thereon shall be  
24 furnished to the Contracting Officer and the Commission in such form and on such  
25 date or dates as the Contracting Officer or the Commission may require. Subject  
26 to applicable Federal laws and regulations, each party to this Contract shall

1 have the right during office hours to examine and make copies of the other  
2 parties' nonprivileged books and records relating to matters covered by this  
3 Contract.

4 Charges Payable to the United States

5 11. The District shall pay, through the Commission, the following annual  
6 charges to the United States:

7 (a) Water Diversion Fee: A charge of fifty cents (\$0.50) per  
8 acre-foot of Colorado River water diverted in the prior Year by the District  
9 hereunder during the Hoover Dam cost repayment period for credit to the  
10 United States for partial repayment for the cost of constructing, operating, and  
11 maintaining Hoover Dam, and following the Hoover Dam cost repayment period, such  
12 charge as may thereafter be prescribed by Congress.

13 (b) Administrative Fee: An annual administrative fee at a minimum  
14 rate of one thousand dollars (\$1,000) per Year to compensate the United States  
15 for the expenses reasonably to be incurred by the Contracting Officer in the  
16 routine administration of this Contract and its Entitlements. The administrative  
17 fee for the Year in which this Contract becomes effective shall be paid within  
18 sixty (60) days of the Effective Date and thereafter the fee for the Year shall  
19 be paid in accordance with article 13. The Contracting Officer may revise such  
20 charge as of January 1 of any Year upon ninety (90) days' advance notice to the  
21 Commission and the District if the Contracting Officer determines that a  
22 different charge is necessary to cover such routine expenses. Upon request, the  
23 Contracting Officer shall give the Commission or the District a written  
24 explanation of the basis for the Contracting Officer's administrative fee,  
25 including how it is derived and how the United States administrative costs are  
26 apportioned among contractors in Nevada or in the Lower Colorado River Basin in

1 Arizona, California, and Nevada, including the District.

2 (c) Other Fees or Charges: Additional fees to compensate the  
3 United States for other expenses reasonably to be incurred by the United States  
4 in the administration of this Contract, or the Entitlements hereunder. Such fees  
5 or charges may be only for non-recurring activities or work unique to the  
6 administration of this Contract or the Entitlements hereunder. The fees or  
7 charges shall be the District's proportionate share of actions to be taken by or  
8 on behalf of the Contracting Officer which are of such a nature that they benefit  
9 the District. The Contracting Officer shall not undertake any actions which  
10 would obligate the District to pay such fees or charges without first consulting  
11 with the District and the Commission regarding the scope of the work, providing  
12 an estimate of the charges, and obtaining the consent of the District.

13 Charges Payable to the Commission

14 12. (a) The District shall pay to the Commission a charge per acre-foot  
15 of Colorado River water diverted by the District hereunder to defray the  
16 District's proportionate share of the Commission's administrative costs,  
17 calculated as provided in this article.

18 (b) The administrative charge for the period beginning on the  
19 Effective Date of this Contract and ending on June 30, 1993, is seventy-two cents  
20 (\$0.72) per acre-foot.

21 (c) Except as provided in subarticle (d), the administrative charge  
22 shall be revised effective July 1 of each odd-numbered Year after the Effective  
23 Date, and calculated as follows:

24 (1) First, calculate from appropriate timesheets the average  
25 percentage of time spent by each executive and professional employee of, or  
26 assigned to, the Commission on matters related to water (excluding administration



1 of the Southern Nevada Water System): during the year ending April 30, 1992, for  
2 the revision effective July 1, 1993; and during the two (2) years ending April 30  
3 of the year immediately preceding July 1 of each subsequent odd-numbered Year,  
4 for all subsequent revisions;

5 (2) Second, multiply the percentages calculated in paragraph (1)  
6 by the salaries budgeted for each such executive and professional employee during  
7 the two (2) fiscal years beginning July 1 of each odd-numbered Year;

8 (3) Third, add the products of each of the calculations made in  
9 paragraph (2) to derive the salary component of the revised administrative  
10 charge;

11 (4) Fourth, multiply the sum calculated under paragraph (3) by  
12 an overhead percentage factor, calculated by dividing the Commission's total  
13 overhead costs by the total salaries of such executive and professional  
14 employees, both costs and salaries being those budgeted for the two  
15 (2) fiscal years beginning July 1 of each odd-numbered Year, to derive the  
16 overhead component of the revised administrative charge;

17 (5) Fifth, add the amount calculated under paragraph (3) to the  
18 amount calculated under paragraph (4) to derive the proportionate share of  
19 administrative costs to be borne by all contractors taking delivery of  
20 Colorado River water in Nevada.

21 (6) Sixth, divide the amount calculated under paragraph (5) by  
22 the number of acre-feet of Colorado River water estimated by the Commission to  
23 be delivered to all contractors during the two (2) fiscal years beginning July 1  
24 of each odd-numbered Year to derive the revised per-acre-foot administrative  
25 charge.

26 (d) The purpose of the procedure described in subarticle (c) is to

1 determine the District's proportionate share of the Commission's administrative  
2 costs related to water (excluding administration of the Southern Nevada Water  
3 System) on a per-acre-foot basis to be paid each billing period during each  
4 biennium corresponding with the biennial budgets submitted by the Commission to  
5 the Nevada State Legislature. If the months beginning and ending the biennium are  
6 changed by law, the months named in this article shall change correspondingly.  
7 If the Commission is required by law to prepare and submit budgets to the Nevada  
8 State Legislature annually, the administrative charge shall be revised annually  
9 according to the procedure described in this article conformed as necessary to  
10 accommodate annual revisions.

11 (e) The Commission shall notify the District and the  
12 Contracting Officer of the amount of any revised administrative charge one  
13 (1) month before the effective date of the revision. If the District disputes  
14 the amount of the revised administrative charge calculated under this article,  
15 the District shall pay the revised charge when due under protest and any  
16 overpayment subsequently determined hereunder shall be reimbursed to the  
17 District, without interest, within sixty (60) days after final determination.

#### 18 Billing Procedure

19 13. The Commission shall submit a bill to the District on or before  
20 February 10 of each Year separately stating the annual amount of the fees or  
21 charges due to the United States and to the Commission pursuant to this Contract.  
22 The District shall pay the Commission each such fee or charge on or before  
23 March 10 of that Year. Payment to the Commission of any fee or charge due to the  
24 United States shall constitute payment to the United States by the District for  
25 all purposes under this Contract. Promptly upon receipt of payment from the  
26 District, but not later than March 20, the Commission shall pay the United States

1 the fees or charges collected hereunder.

2 Charges for Delinquent Payments

3 14. (a) The District shall be subject to interest, administrative, and  
4 penalty charges on delinquent installments or payments due under this Contract.  
5 When a payment is not received by the due date, the District shall pay an  
6 interest charge for each day the payment is delinquent beyond the due date plus  
7 any charge or penalty imposed on the Commission by the Contracting Officer  
8 pursuant to this Contract as a result of the District's delinquency. When a  
9 payment becomes sixty (60) days delinquent, the District shall pay to the  
10 Contracting Officer and to the Commission an additional administrative charge  
11 equal to their respective additional costs of billing and processing the  
12 delinquent payment. When a payment is delinquent ninety (90) days or more, the  
13 District shall pay an additional penalty charge of six percent (6%) per Year for  
14 each day the payment is delinquent beyond the due date. Further, the District  
15 shall pay any costs and fees, other than attorneys' fees, incurred by the  
16 Contracting Officer or by the Commission for debt collection services or  
17 litigation associated with a delinquent payment.

18 (b) The interest rate shall be the greater of the rate prescribed  
19 quarterly in the Federal Register by the Department of the Treasury for  
20 application to overdue payments, or the rate of one-half (0.5) percent per month  
21 prescribed by section 6 of the Reclamation Project Act of 1939 (Public  
22 Law 76-260). The interest charge rate shall be determined as of the due date and  
23 remain fixed for the duration of the delinquent period.

24 (c) When a partial payment on a delinquent account is received, the  
25 amount received shall be applied first to the penalty, second to the  
26 administrative charges, third to the accrued interest, and finally to the overdue

1 payment.

2 Water Conservation

3 15. (a) Within one (1) year after the Effective Date of this Contract, the  
4 District shall submit in writing to the Contracting Officer an effective water  
5 conservation program acceptable to the Contracting Officer. The water  
6 conservation program shall contain definite water conservation objectives,  
7 appropriate economically feasible water conservation measures, time schedules for  
8 meeting those objectives, and other pertinent information requested by the  
9 Contracting Officer. At subsequent five- (5-) year intervals, the District shall  
10 update its water conservation program by submitting to the Contracting Officer  
11 for review information regarding the effectiveness and status of the program.  
12 The information shall include: (i) an evaluation of water conservation  
13 accomplishments in the previous five (5) years; (ii) a discussion of future water  
14 conservation opportunities; and (iii) revised or new water conservation  
15 objectives, measures, and time schedules. Based on the conclusions from the  
16 review and pursuant to consultation with the Contracting Officer, the District  
17 shall continue or revise the existing water conservation program as determined  
18 by the Contracting Officer. All submissions made to the Contracting Officer  
19 under this article shall be made at the same time to the Commission.

20 (b) Submission by the Southern Nevada Water Authority of a water  
21 conservation program which is applicable to the service area of the District and  
22 which takes into account delivery of water pursuant to this Contract, and  
23 acceptance thereof by the Contracting Officer shall constitute compliance by the  
24 District with the requirements of this article.

25 Bureau of Reclamation Regulations

26 16. (a) If the Secretary adopts any regulations for administering

1 Entitlements to Colorado River water, prescribing determinations or appeals  
2 procedures, or for operating the Colorado River in the Lower Colorado River Basin  
3 in Arizona, California, and Nevada, the terms, definitions, or provisions of this  
4 Contract shall be revised accordingly to conform with the regulations.

5 (b) Subarticle (a) shall not apply to regulations relating to the  
6 following subjects: (i) reductions in or termination of any of the Entitlements  
7 set forth in article 5; (ii) priorities set forth in subarticle 5(i); and  
8 (iii) termination of this Contract.

9 Determinations; Appeals

10 17. (a) The parties agree that the delivery of water or the use of Federal  
11 facilities pursuant to this Contract is subject to Reclamation law and applicable  
12 Reclamation Regulations.

13 (b) The Contracting Officer shall have the right to make  
14 determinations necessary to administer this Contract that are consistent with the  
15 Contract, the laws of the United States or the State, and applicable  
16 Reclamation Regulations. Such determinations shall be made in consultation with  
17 the District and the Commission.

18 (c) (1) The District shall have a right to administratively appeal  
19 any determination, notice, or other decision of the Contracting Officer under  
20 articles 11 and 20 by filing with the Commissioner of Reclamation, hereinafter  
21 called "Commissioner": (i) a notice of appeal within thirty (30) days of the  
22 date that notice of such decision is given to the District; and (ii) a detailed  
23 statement of the basis for the appeal within thirty (30) days of the date of  
24 filing such notice of appeal. The decision of the Commissioner shall constitute  
25 the final decision of the Secretary for purposes of judicial review.

26 (2) For purposes of judicial review, all other determinations,

1 notices, and other decisions of the Contracting Officer shall become and  
2 constitute the final decision of the Secretary sixty (60) days after the date  
3 that notice of such other determinations, notices, and other decisions is given  
4 to the District, unless modified or rescinded by the Contracting Officer within  
5 such sixty- (60-) day period.

6 (3) Except as provided in this paragraph, all determinations,  
7 notices, or other decisions of the Contracting Officer made pursuant to this  
8 Contract shall be immediately effective when made. If a notice of appeal is  
9 filed with the Commissioner under paragraph (1), the filing of the notice of  
10 appeal shall suspend the immediate effectiveness of the decision unless the  
11 Commissioner expressly determines that the decision shall remain immediately  
12 effective. In such a case the District may treat the decision as the final  
13 agency decision for purposes of judicial review.

14 Assignment Limited; Successors and Assigns Obligated

15 18. (a) No assignment or transfer of this Contract or any part or interest  
16 therein shall be valid until approved in writing by the Contracting Officer.

17 (b) The provisions of this Contract shall apply to and bind the  
18 successors and assigns of the parties hereto.

19 Notices

20 19. Any notice, demand, or request authorized or required by this Contract  
21 shall be deemed to have been given, and where required to be given to a party  
22 shall be given at the same time to each of the other parties, by mailing it,  
23 postage prepaid, or delivering it to the other parties as follows:

24 (1) Regional Director  
25 Lower Colorado Region  
Bureau of Reclamation  
P.O. Box 61470  
26 Boulder City NV 89006-1470

(2) Director  
Colorado River Commission  
of the State of Nevada  
Mail Room Complex  
Las Vegas NV 89158

1       (3)   General Manager  
2            Big Bend Water District  
3            5857 East Flamingo Road  
4            Las Vegas NV 89119

5   The designation of the addressee or the address may be changed by notice given  
6   in the same manner as provided in this article for other notices.

7                                   Termination

8       20.   (a)   The United States reserves the right to terminate this Contract  
9   by written notice thereof to the District:

10           (1)   If the District is in arrears for more than six  
11   (6) months in the payment of any fee or charge due to be paid by it hereunder to  
12   the United States.

13           (2)   If the District defaults by failing or refusing to meet  
14   any material obligation to the United States or the Commission under this  
15   Contract and the District fails to cure such default within thirty (30) days  
16   after service of written notice of default upon the District by the  
17   Contracting Officer specifying the nature of the default or within such longer  
18   period of time as is reasonably necessary to cure the default.

19           (b)   The District shall have a right to appeal a notice of  
20   termination pursuant to subarticle 17(c). The filing of a notice of appeal shall  
21   suspend the effectiveness of the termination until a final decision is made by  
22   the Commissioner, unless the Commissioner determines the termination shall be  
23   made immediately effective. If the Commissioner determines that the termination  
24   shall be made immediately effective, the termination shall be deemed final agency  
25   action for purposes of judicial review.

26           (c)   The termination of this Contract does not relieve the District  
of any obligation then owing under this Contract to the United States or to the

1 Commission.

2 (d) If this Contract is lawfully terminated pursuant to this  
3 article, the District hereby covenants and agrees to hold the United States and  
4 the Commission harmless from any claims, damages, or alleged causes of action  
5 claimed to have resulted from such action. Nothing contained in this Contract  
6 shall relieve the District from any obligation to make the United States and the  
7 Commission whole for the period of this Contract for all losses or damages  
8 occasioned by the failure of the District to pay for water delivered to or  
9 diverted by it hereunder.

10 Five- (5-) Year Review

11 21. (a) There is reserved to the Secretary the right, at intervals of  
12 five (5) years beginning five (5) years after the Effective Date of this  
13 Contract, to review the existing and potential future needs of the District for  
14 the water to which it is entitled pursuant to this Contract. The Secretary shall  
15 give the District reasonable prior notice of any such review and shall afford the  
16 District an opportunity to be heard.

17 (b) In determining the existing and potential future needs of the  
18 District, the Secretary shall consider, among other things:

19 (1) Reasonable representations of water availability in  
20 connection with covenants given to obtain financing (by issuance of bonds or  
21 other forms of securities) for the construction, acquisition, improvement, or  
22 extension of works of improvement for the treatment or delivery of the water  
23 obtained hereunder, to the extent of the amount of the water needed to generate  
24 the revenue necessary to support and secure the repayment of the bonds or other  
25 forms of financing;

26 (2) The capacity of works of improvement constructed or



1 otherwise acquired for the treatment or delivery of water obtained hereunder;

2 (3) Past growth and long-term projections of growth;

3 (4) Economic downturns or other events which may cause a  
4 temporary lessening of demand for water or a slowdown in projected growth;

5 (5) The existence of circumstances reasonably indicating a  
6 long-term lack of need for any unused portion of such water; and

7 (6) Restrictions on use required by the Secretary pursuant  
8 to applicable Federal regulations.

9 (c) The Secretary may reduce the maximum amount of water  
10 deliverable to the District pursuant to this Contract if, and to the extent, the  
11 Secretary determines that the District will not have a future need for such  
12 water. The Secretary shall give the District notice of such reduction and of the  
13 basis for the Secretary's determination.

14 (d) Subarticle (a) will become operational only if either of the  
15 following events takes place:

16 (1) The District ceases to be a member of the Southern Nevada  
17 Water Authority.

18 (2) The Southern Nevada Water Authority ceases to be a public  
19 entity capable of complying with the terms of contract No. 2-07-30-W0266 or  
20 ceases to have municipal water purveyors in Clark County, Nevada, among its  
21 members.

#### 22 Quality of Water

23 22. The operation and maintenance of Federal facilities shall be  
24 performed in such manner as is practicable to maintain the quality of raw water  
25 made available through such facilities at the highest level reasonably attainable  
26 as determined by the Contracting Officer. The United States does not warrant the

1 quality of water and is under no obligation to construct or furnish water  
2 treatment facilities to maintain or better the quality of water.

3 Water and Air Pollution Control

4 23. The District, in carrying out this Contract, shall comply with all  
5 applicable water and air pollution laws and regulations of the United States and  
6 the State and shall obtain all required permits or licenses from the appropriate  
7 Federal, State, or local authorities.

8 Releases and Indemnification

9 24. (a) Except as provided in subarticle (c), the District hereby  
10 releases and agrees that it will indemnify and hold harmless the United States  
11 and the Commission and their officers, agents, employees, and successors or  
12 assigns, from every claim for damages to persons or property, direct or indirect,  
13 and of whatever nature, except for gross negligence, arising by reason of the  
14 diversion, pumping, transportation, or use by the District of water delivered  
15 under this Contract.

16 (b) Water shall be delivered hereunder without treatment of any  
17 kind and without any warranty whatsoever by the United States or the Commission  
18 as to the quality or fitness of such water for the uses or purposes of the  
19 District. Except as provided in subarticle (c), consistent with applicable  
20 Federal law, the District hereby expressly relieves and releases the  
21 United States and the Commission and their officers, agents, and employees, from  
22 any liability or responsibility whatsoever, except for gross negligence, for the  
23 quality, composition, or contents of the water delivered hereunder, or for any  
24 lack of fitness of such water for any use thereof intended by the District.

25 (c) The agreement by the District to relieve, release, indemnify,  
26 and hold the United States harmless under subarticles (a) and (b) shall not

1 extend to any cause of action against the United States which is not based on  
2 this Contract or which arises out of contamination of water delivered or diverted  
3 hereunder which is caused by an act or omission of the United States.

4 (d) The District hereby covenants and agrees that the United States  
5 and the Commission, their officers, agents, employees, and successors or assigns,  
6 shall not be liable for damages caused by suspensions or reductions in delivery  
7 of water which occur for any reason whatsoever, except for gross negligence,  
8 including, but not limited to, the operation of subarticles 4(c), (e), and (g),  
9 an insufficient supply of water as determined by the Secretary, or by hostile  
10 diversion, drought, or interruption of service occasioned by necessary repairs  
11 to any of the works by means of which water is stored or for damages caused by  
12 floods, unlawful acts, or unavoidable accidents.

#### 13 Priority of Claims of the United States

14 25. Claims of the United States arising out of this Contract shall have  
15 priority over all others, secured or unsecured, to the extent provided by  
16 applicable law.

#### 17 Contingent on Appropriation or Allotment of Funds

18 26. The expenditure or advance of any money or the performance of any  
19 obligation by the United States under this Contract shall be contingent upon the  
20 appropriation or allotment of funds. Absence of appropriation or allotment of  
21 funds shall not relieve the District from any obligations under this Contract.  
22 No liability shall accrue to the United States in case funds are not appropriated  
23 or allocated.

#### 24 Effect of Waiver of Breach of Contract

25 27. All rights of action for breach of any of the provisions of this  
26 Contract are reserved to the United States as provided in section 3737 of the

1 Revised Statutes of the United States, and in a similar manner to the Commission  
2 and to the District. The waiver of a breach of any of the provisions of this  
3 Contract shall not be deemed to be a waiver of any provision hereof, or of any  
4 other subsequent breach of any provisions hereof.

5 Remedies Under Contract Not Exclusive

6 28. Nothing contained in this Contract shall be construed as in any  
7 manner abridging, limiting, or depriving the United States, the Commission, or  
8 the District of any means of enforcing any remedy either at law or in equity for  
9 the breach of any of the provisions hereof which it would otherwise have.

10 General Obligation

11 29. The obligation of the District to make payments under this Contract  
12 is a general obligation of the District notwithstanding the default of individual  
13 water users in their obligations to the District.

14 Officials Not to Benefit

15 30. No Member of or Delegate to Congress, Resident Commissioner, or  
16 official of the District shall benefit from this Contract other than as a water  
17 user or landowner in the same manner as other water users or landowners.

18 Uncontrollable Forces

19 31. No party shall be considered to be in default in respect to any  
20 obligation hereunder, if prevented from fulfilling such obligation by reason of  
21 uncontrollable forces, the term "Uncontrollable Forces" being deemed, for the  
22 purposes of this Contract, to mean any cause beyond the control of the party  
23 affected, including but not limited to drought, failure of facilities, flood,  
24 earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor  
25 disturbance, sabotage, and restraint by court or public authority, which by  
26 exercise of due diligence and foresight, such party could not reasonably have

1 | been expected to avoid. Any party rendered unable to fulfill any obligation by  
2 | reason of Uncontrollable Forces shall exercise due diligence to remove such  
3 | inability with all reasonable dispatch.

4 | Equal Opportunity

5 | 32. During the performance of this Contract, the District agrees as  
6 | follows:

7 | (a) The District will not discriminate against any employee or  
8 | applicant for employment because of race, color, religion, sex, or national  
9 | origin. The District will take affirmative action to ensure that applicants are  
10 | employed, and that employees are treated during employment, without regard to  
11 | their race, color, religion, sex, or national origin. Such action shall include,  
12 | but not be limited to, the following: employment, upgrading, demotion, or  
13 | transfer; recruitment or recruitment advertising; layoff or termination; rates  
14 | of pay or other forms of compensation; and selection for training, including  
15 | apprenticeship. The District agrees to post in conspicuous places, available to  
16 | employees and applicants for employment, notices to be provided by the  
17 | Contracting Officer setting forth the provisions of this nondiscrimination  
18 | clause.

19 | (b) The District will, in all solicitations or advertisements for  
20 | employees placed by or on behalf of the District, state that all qualified  
21 | applicants will receive consideration for employment without discrimination  
22 | because of race, color, religion, sex, or national origin.

23 | (c) The District will send to each labor union or representative  
24 | of workers with which it has a collective bargaining agreement or other contract  
25 | or understanding, a notice, to be provided by the Contracting Officer, advising  
26 | said labor union or workers' representative of the District's commitments under

1 | section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall  
2 | post copies of the notice in conspicuous places available to employees and  
3 | applicants for employment.

4 |         (d) The District will comply with all provisions of Executive Order  
5 | No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and  
6 | relevant orders of the Secretary of Labor.

7 |         (e) The District will furnish all information and reports required  
8 | by said amended Executive Order and by the rules, regulations, and orders of the  
9 | Secretary of Labor, or pursuant thereto, and will permit access to its books,  
10 | records, and accounts by the Contracting Officer and the Secretary of Labor for  
11 | purposes of investigation to ascertain compliance with such rules, regulations,  
12 | and orders.

13 |         (f) In the event of the District's noncompliance with the  
14 | nondiscrimination clauses of this Contract or with any of such rules,  
15 | regulations, or orders, this Contract may be canceled, terminated, or suspended,  
16 | in whole or in part, and the District may be declared ineligible for further  
17 | Government contracts in accordance with procedures authorized in said amended  
18 | Executive Order, and such other sanctions may be imposed and remedies invoked as  
19 | provided in said amended Executive Order, or by rule, regulation, or order of the  
20 | Secretary of Labor, or as otherwise provided by law.

21 |         (g) The District will include the provisions of subarticles (a)  
22 | through (g) in every subcontract or purchase order unless exempted by rules,  
23 | regulations, or orders of the Secretary of Labor issued pursuant to section 204  
24 | of said amended Executive Order, so that such provisions will be binding upon  
25 | each subcontractor or vendor. The District will take such action with respect  
26 | to any subcontract or purchase order as may be directed by the Secretary of Labor

1 as a means of enforcing such provisions, including sanctions for noncompliance;  
2 Provided, however, that in the event the District becomes involved in, or is  
3 threatened with, litigation with a subcontractor or vendor as a result of such  
4 direction, the District may request the United States to enter into such  
5 litigation to protect the interests of the United States.

6 Compliance with Civil Rights Laws and Regulations

7 33. (a) The District shall comply with Title VI of the Civil Rights Act  
8 of 1964 (42 U.S.C. 2000d), section 504 of the Rehabilitation Act of 1975 (Public  
9 Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101  
10 et seq.) and any other applicable civil rights laws, as well as with their  
11 respective implementing regulations and guidelines imposed by the Department of  
12 the Interior or the Bureau of Reclamation, hereinafter referred to as  
13 "Reclamation."

14 (b) These statutes require that no person in the United States  
15 shall, on the grounds of race, color, national origin, handicap, or age, be  
16 excluded from participation in, be denied the benefits of, or be otherwise  
17 subjected to discrimination under any program or activity receiving financial  
18 assistance from Reclamation. By executing this Contract, the District agrees to  
19 immediately take any measures necessary to implement this obligation, including  
20 permitting officials of the United States to inspect premises, programs, and  
21 documents.

22 (c) The District makes this agreement in consideration of and for  
23 the purpose of obtaining any and all Federal grants, loans, contracts, property  
24 discounts or other Federal financial assistance extended after the date hereof  
25 to the District by Reclamation, including installment payments after such date  
26 on account of arrangements for Federal financial assistance which were approved

1 before such date. The District recognizes and agrees that such Federal  
2 assistance will be extended in reliance on the representations and agreements  
3 made in this article, and that the United States reserves the right to seek  
4 judicial enforcement thereof.

5 IN WITNESS WHEREOF, the parties hereto have executed this Contract  
6 No. 2-07-30-W0269, Amendment No. 1, the day and Year first above written.

7 UNITED STATES OF AMERICA

8 Legal Approval and Sufficiency

9 By: [Signature]  
10 Field Solicitor  
11 Phoenix, Arizona

By: [Signature]  
Commissioner  
Bureau of Reclamation

12 STATE OF NEVADA, acting through its  
13 COLORADO RIVER COMMISSION

14 Attest:

[Signature]  
Director

By: [Signature]  
Chairman

16 Approved as to form:

Ratified and approved:

17 By: [Signature]  
18 Attorney General of the  
State of Nevada

By: [Signature]  
Governor of the State of Nevada

19 BIG BEND WATER DISTRICT

20 Attest:

[Signature]  
21 ~~Vice Chairman~~ Secretary

By: [Signature]  
Chairman



**RECLAMATION RECREATION PURPOSE LICENSE AGREEMENT**

1. A copy of the Reclamation Recreation Purpose License Agreement No. 06-07-30-L0614, dated December 16, 2009, as amended, dated November 5, 2010, between Clark County and Reclamation is attached.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

ORIGINAL

FORMAT APPROVED  
Lower Colorado Regional Realty Office  
Expires: June 30, 2010

RECLAMATION RECREATION PURPOSE LICENSE

(Act of June 17, 1902; 43 U.S.C. 391, and Acts Amendatory and Supplementary thereto; Act of July 9, 1965; 16 U.S.C. 4601-12 et seq.)

Contract Number: (USBR use only)

06-07-30-L0614

This license entered into on this 16<sup>th</sup> day of DECEMBER, 2009, by the United States of America, the licensor, through the Authorized Officer of the Bureau of Reclamation, and

County of Clark

hereinafter called the licensee, pursuant and subject to the terms and provisions of the Reclamation Act, the Federal Water Project Recreation Act, and Acts supplementary and amendatory thereto, and such specific project and appropriations Acts as may be applicable; 43 CFR 429; and to all reasonable regulations of the Secretary of the Interior now or hereafter in force when not inconsistent with any express and specific provisions herein, which are made a part hereof,

WITNESSETH:

Sec. 1. The licensor, in consideration of the rents to be paid and the conditions to be observed as hereinafter set forth, does hereby grant to the licensee the right and privilege of using, for the purposes hereinafter set forth, the following described lands:

Sections 1, 2, 10, 11, and 12, T. 32S., R. 66E., Clark County, Nevada, MDM, as shown on Exhibit A

containing 1191 acres for public recreation and open space use, together with the right to construct and maintain thereon all buildings or other improvements necessary for such use for a period of 50 years, the rental to be \$ -0- per annum. If, at the expiration date of the license the Authorized Officer shall determine that the license may be renewed, the licensee herein will be accorded the privilege of renewal upon such terms as may be fixed by the licensor. The licensee may use the premises for

Laughlin Regional Heritage Greenway Trail and Park: a multi-use trail system, day-use area, and golf complex, for public recreation purposes as further described in the following:

Summary and purpose and need of the Clark County Laughlin Regional Heritage Trail and Park. To provide for public recreation and open space along the Colorado River in the Laughlin area of Clark County, consisting of the following facilities:

1. Regional Park
2. Heritage Trails
3. Day Use Areas
4. Golf Complex
5. Other facilities requested by Clark County and approved by Reclamation in the future.

Sec. 2. There are reserved to the United States all mineral deposits in said lands, together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

Sec. 3. The licensor reserves the right of entry, or use, by

(a) Any authorized person, upon the licensed area and into the buildings constructed thereon for the purpose of inspection;

(b) Federal agents and game wardens upon the licensed area on official business;

(c) The United States, its permittees and licensees, to mine and remove the mineral deposits referred to in Sec. 2, above.

(d) The United States for any Reclamation project use as prescribed in 43 CFR 429.

Sec. 4. In consideration of the foregoing, the licensee hereby agrees:

(a) To improve and manage the licensed area in accordance with the plan of development and management designated as Laughlin Regional Heritage Greenway Trail, Preliminary Design Report, 2006, Volume I, Appendix A, Appendix B, Volume II, by VTN Nevada and Rialto Studio or any modification thereof hereinafter approved by the Authorized Officer, and to maintain all improvements, during the term of this license, in a reasonably good state of repair.

(b) To pay any Reclamation annual concessions related administration costs once licensee has generated sufficient revenue from concessions to cover operation, maintenance, and recovery costs. Licensee then may use the remaining funds to maintain or improve the public recreation facilities located on Federal Lands under this license.

(c) Not allow the use of the lands for unlawful purposes or for any purpose not specified in this license unless consented to under its terms; not to prohibit or restrict, directly or indirectly, or permit its agents, employees, contractors (including, without limitations, lessees, sublessees, and permittees), to prohibit or restrict the use of any part of the licensed premises or any of the facilities thereon by any person because of such person's race, creed, color, sex, or national origin.

(d) Not to assign this license or to change the use of the land, without first receiving the written consent of the Authorized Officer, Bureau of Reclamation.

(e) That this license may be terminated after due notice to the licensee upon a finding by the Authorized Officer that the licensee had failed to comply with the terms of the license; or has failed to use the licensed lands for the purposes specified in this license for a period of 2 consecutive years; or that all or part of the lands is being devoted to some other use not consented to by the Authorized Officer; or that the licensee has not complied with his development and management plans referred to in subsection 4(a).

(f) That upon the termination of this license by expiration, surrender, or cancellation thereof, the licensee shall surrender possession of the premises to the United States in good condition and shall comply with such provisions and conditions respecting the removal of the improvements of and equipment on the property as may be made by an Authorized Officer.

(g) To take such reasonable steps as may be needed to protect the surface of the licensed area and the natural resources and improvements thereon.

(h) Not to cut timber or remove vegetation or minerals from the licensed area without prior permission of, or in violation of the provisions and conditions made by an Authorized Officer.

(i) That nothing contained in this license shall restrict the acquisition, granting, or use of permits or rights-of-way under existing laws by an authorized Federal officer.

**Sec. 5. Equal Opportunity Clause.** Licensee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither licensee nor licensee's subcontractors shall maintain segregated facilities.

**Sec. 6. Equal Access Clause.** Licensee shall comply with all provisions of the Americans With Disabilities Act of July 26, 1990, the Architectural Barriers Act of 1968, and Section 504 of the Rehabilitation Act of 1973, as

amended. These Acts require that programs and public facilities constructed or renovated be accessible to and usable by persons with disabilities.

**Sec. 7.** The licensee may surrender this license or any part thereof by filing a written relinquishment in the appropriate Bureau of Reclamation office. The relinquishment shall be subject to the payment of all accrued administrative costs and to the continued obligation of the licensee to place the lands in condition for relinquishment in accordance with the applicable license terms in subsections 4(f) and 4(g) and the appropriate regulations.

**Sec. 8.** The licensee further agrees to comply with and be bound by those additional terms and conditions identified as:

Exhibit B - Standard Stipulations (attached)

Exhibit C - Finding of No Significant Impact, Dated May 16, 2007. (attached)

1. General Considerations, pages 5 - 6
2. Water Quality, pages 6 - 7
3. Flooding, page 7
4. Filing Jurisdictional Waters, page 7 - 8
5. Desert Tortoise, pages 8 - 13
6. Migratory Bird, page 13
7. Southwestern Willow Flycatcher, page 14
8. Bonytail chub and Razorback sucker, pages 14 - 15
9. Noxious Weeds, page 15
10. Particulate Matter, page 15
11. Dust, page 16
12. Emissions, page 16
13. Cultural Resources, page 16
14. Soundscape, page 17

Exhibit D - Biological Opinion Memorandum dated May 7, 2007 (attached)

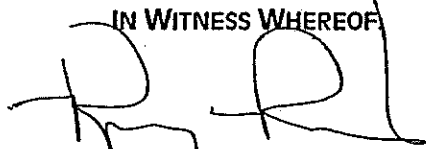
1. Bonytail chub and Razorback sucker, pages 4 - 6
2. Southwestern Willow Flycatcher, page 6
3. Reserve Area, pages 12 - 14
4. Incidental Take Statement, pages 32 - 39

Exhibit E - Nationwide Permit #27 (attached)

and which are by this reference made a part hereof.

**Sec. 9.** No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

FOR EXECUTION BY LICENSEE  
IN WITNESS WHEREOF

By:   
(Signature of Licensee's Authorized Officer)

Chairman, Board of County Commissioners  
(Title)

11/17/09  
(Date)

THE UNITED STATES OF AMERICA  
BUREAU OF RECLAMATION

By:   
(Signature of Reclamation Authorized Officer)

DIRECTOR, RESOURCES MANAGEMENT OFFICE  
(Title)

DECEMBER 16, 2009  
(Date)

ACKNOWLEDGEMENTS:

Of the Licensee:

State of: Nevada  
County of: Clark SS.

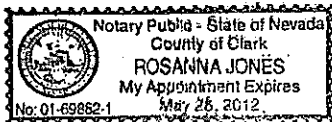
This instrument was acknowledged before me on this  
17th day of November, 2009

by Rory Reid

who personally appeared before me.

[Signature]  
(Signature of Notary)

Seal



Of the Licenser:

State of: Nevada  
County of: Clark SS.

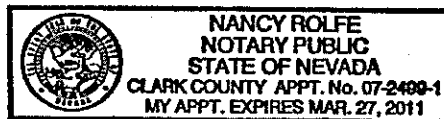
This instrument was acknowledged before me on this  
16th day of December, 2009

by William F. Liebhauser

who personally appeared before me.

[Signature]  
(Signature of Notary)

Seal



# Laughlin Regional Heritage Greenway Park & Trail

06-07-30-L0614



 Lake Mead National Recreation Area

0 0.25 0.5 1 Miles



Notes: T.32S., R.66E. Secs. 1, 10, 11, & 12, MDM, Clark County, Nevada  
T.31S., R.66E. Sec. 36, MDM, Clark County, Nevada

**Exhibit A**

# STANDARD STIPULATIONS

License No. 06-07-30-L0614

1. The Licensee shall immediately provide an oral notification to Reclamation's Authorized Officer of the discovery of any and all antiquities or other objects of archaeological, cultural, historic, or scientific interest on Reclamation lands. The Licensee shall follow up with a written report of its finding(s) to the Authorized Officer within forty-eight (48) hours. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and artifacts discovered as a result of activities under this authorization. The Licensee shall immediately cease the activity in the area of the discovery, make a reasonable effort to protect such discovery, and wait for written approval from the authorized official before resuming the activity. Protective and mitigative measures specified by the Authorized Officer shall be the responsibility of the Licensee.
  - (a) When the Authorized Officer is notified of a cultural resources discovery, he/she shall immediately notify the appropriate cultural resources professional.
  - (b) There are two known sites in the area, and coordination with the Authorized Officer is required prior to ground disturbance within these areas.
2. Licensee, at its sole expense, shall conduct periodic accessibility evaluation surveys of the Laughlin Regional Heritage Trail and Park (Regional Park) facilities and programs, at intervals to be determined by the Authorized Officer, and shall submit the resulting information to the Authorized Officer in a format prescribed by the United States. Retrofitting of facilities or removal of barriers identified in the accessibility evaluation surveys, if any, shall be at the sole cost and expense of Licensee.
3. Informational materials shall include the phrase "Lands for this facility provided for public enjoyment by the U.S. Bureau of Reclamation" or a substantially similar phrase, and all site entrances or significant interpretative signage shall acknowledge the use of the lands of the United States under this License by similar language and, with Reclamation's written approval, by placement of the official seals of the Department of the Interior and Bureau of Reclamation on the signage or informational materials.
4. Licensee shall at all times keep the construction areas, including storage areas used by Licensee, free from accumulations of waste materials or rubbish. Prior to completion of construction, Licensee shall remove from the vicinity of the work all rubbish, unused materials, concrete forms, and other like material, belonging to Licensee or used under Licensee's direction during construction, and all work areas shall be left in a neat condition.
5. All Regional Park facility designs must be submitted to the Authorized Officer for review and approval prior to initiation of construction or surface-disturbing activities on the lands of the United States under this License; no construction shall commence without the prior written authorization of the Authorized Officer.
6. Nondiscrimination: Licensee hereby agrees as follows:
  - (1) **Nondiscrimination on the Basis of Race, Color, or National Origin.**

The Licensee hereby agrees as follows:

    - (a) To comply with Title VI (Section 601) of the Civil Rights Act of July 2, 1964 (78 Stat. 241) which provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance," and to be bound by the regulations of the Department of the Interior for the effectuation thereof, as set forth in 43 CFR § 17.
    - (b) To obligate its subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.
    - (c) For the purposes of this part, Federal financial assistance as defined by 43 CFR §17.12 includes (i) grants and loans of Federal funds, (ii) grants or donations of Federal property and interests in property, (iii) the detail of Federal personnel, (iv) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient, and (v) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.
  - (2) **Nondiscrimination on the Basis of Disability.**

The Licensee hereby agrees

    - (a) To comply with Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, as amended which is designed to eliminate discrimination on the basis of disability in any program or activity receiving Federal financial assistance.
    - (b) To obligate its subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.
    - (c) For the purposes of this part, Federal financial assistance as defined by 43 CFR §17.202 means any grant, cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department of the Interior provides or otherwise makes available assistance in the form of:
      - (i) Funds;
      - (ii) Services of Federal Personnel; or
      - (iii) Real and personal property or any interest in or use of such property, including: easements; transfers or leases of such property for less than market value or for reduced consideration; and proceeds from a subsequent transfer or lease of such property if the Federal share of its market value is not returned to the Federal Government.
  - (3) **Nondiscrimination on the Basis of Age.**

The Licensee hereby agrees as follows:

    - (a) To comply with the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, et seq., and the general age discrimination regulations at 45 CFR § 90 which are designed to prohibit discrimination on the basis of age in programs and activities receiving Federal financial assistance, as set forth in 43 CFR §17.
    - (b) To obligate its subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.
    - (c) For the purposes of this part, Federal financial assistance as defined by 43 CFR §17.303 means any grant,

Exhibit B

entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which Reclamation provides or otherwise makes available assistance in the form of:

- (i) Funds;
- (ii) Services of Federal Personnel; or
- (iii) Real and personal property or any interest in or use of property, including: transfers or leases of

property for less than market value or for reduced consideration, and proceeds from a subsequent transfer or lease of property if the Federal share of its market value is not returned to the Federal Government.

7. Clean Air and Water: Licensee agrees as follows:

(a) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the execution of this License.

(b) That no portion of the work required by this License will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date when this License was executed unless and until EPA eliminates the name of such facility or facilities from such listing.

(c) Licensee shall be responsible for compliance with all applicable dust abatement and air quality standards in the construction, operation, and maintenance of the Project.

(d) The construction area should be wetted sufficiently prior to and during activity in the permit area to effectively reduce airborne dust.

(e) To insert the substance of the provisions of this section into any nonexempt subcontract, including this paragraph (e).

(f) Definitions: The terms used in this section have the following meanings:

- (1) The term "Clean Air Act" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).
- (2) The term "Water Act" means Federal Water Pollution Control Act, as amended

(33 U.S.C. 1251 et seq.).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act, an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Clean Air Act, or an approved implementation procedure under section 112(d) of the Clean Air Act.

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by EPA or by a State under an approved program, as authorized by section 402 of the Water Act, or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act.

(5) The term "comply" means compliance with clean air or water standards. Comply shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, EPA or an air or water pollution control agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, licensed, or supervised by a contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, EPA, determines that independent facilities are collocated in one geographical area.

8. Hazardous Materials Stipulations: During the performance of this activity, Licensee agrees as follows:

(a) The Licensee may not allow contamination or pollution of Federal lands, waters or facilities and for which the Licensee has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

(b) The Licensee shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in Federal lands, waters or facilities.

(c) "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., and the regulations promulgated pursuant to that Act.

(d) Upon discovery of any event which may or does result in contamination or pollution of Federal lands, waters or facilities, the Licensee shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to the Contracting Officer. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

(e) Violation of any of the provisions of this Article, as determined by the Contracting Officer, may constitute grounds for termination of this contract. Such violations require immediate corrective action by the Licensee and shall make the Licensee liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

(f) The Licensee agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any subcontract or thirdparty contract it may enter into pursuant to this contract.

(g) Reclamation agrees to provide information necessary for the Licensee using reasonable diligence, to comply with the provisions of this Article.

9. This License shall terminate and all rights of the Licensee hereunder shall cease upon the following, and the Licensee will quietly deliver to

the United States possession of the premises in like condition as when taken, reasonable wear and damage by the elements excepted:

(a) For nonuse of the above-described premises by the Licensee for a period of two (2) continuous years, at the option of the United States; or

(b) At any time by the Licensee upon six (6) months' written notice to the United States; or

(c) After failure of the Licensee to observe any of the conditions of this License, and on the 10th day following service of written notice on the Licensee of termination because of failure to observe such conditions.

(d) Upon the expiration, termination, or revocation of this License, if all administrative costs and damage claims due Reclamation have been paid, the Licensee shall remove all structures, equipment, or other improvements made by it from the premises at no cost to the United States. Upon failure to remove any such improvements within sixty (60) days of termination, or revocation, any remaining improvements shall, at the option of the United States, be removed or become the property of the United States. The Licensee shall pay all expenses of the United States, or its assigns, related to removal of such improvements.

10. Licensee shall immediately notify the Authorized Officer, as well as the Town/County Hazardous Material Response Team, of any release of hazardous substances, toxic substances, or hazardous waste on or near the areas authorized by this License.

11. The United States, through Reclamation, has determined following analysis that the impacts of the Regional Park facilities would not result in significant impacts to the human environment as defined by the National Environmental Policy Act, commonly referred to as "NEPA"; and that analysis is documented by the Final Environmental Assessment, Laughlin Regional Park and Regional Heritage Greenway Trails-North Reach, April 2007 and the Finding of No Significant Impact Number LC-06-019, dated May 16, 2007, on file in the Resources Management Office, Lower Colorado Region, Bureau of Reclamation.

12. Licensee shall have the right to allow its agents, contractors, and subcontractors to use lands of the United States under this License for the purposes stated herein.

13. Licensee may permit incidental recreational or special uses on the lands of the United States under this License, provided that neither ownership nor control of the rights issued herein are transferred to another party, and provided that the incidental uses permitted to another party do not differ from those permitted herein.

14. Licensee shall not issue or grant easements, rights of way, land rights, leases, licenses, permits, crossing agreements, recreational or special use agreements, and shall not allow commercial ventures on the lands of the United States under this License. All such use instruments shall only be issued by the United States.

15. **CONCESSIONS:** Licensee may enter into subcontracts, concession agreements, or permits with third parties to develop, operate, maintain, or improve the Regional Park for public recreational purposes. The terms of such contracts, concession agreements, or permits shall not extend beyond the end of the term of this License. Such contracts, concession agreements, and permits shall specifically include all applicable provisions of this License and shall not be effective until approved by Reclamation. All concessions must comply with Reclamation's concession directives and standards. Reclamation reserves the right to insert provisions into said agreements, contracts, or permits that will serve to protect the interests of Reclamation. Each such agreement, contract, or permit shall specify whether Reclamation will honor its terms in the Licensee's place if this License is terminated. No portion of the Regional Park shall be reserved for private exclusive uses. Memberships in special groups or private and semi-private clubs shall not be a condition for use of the area. The Regional Park and its facilities shall be available for public use.

16. **FEES:** Licensee may assess and collect reasonable fees for the use of the Regional Park facilities and areas, in accordance with the initial fee schedule to be agreed to by the parties. Initial fees for the Regional Park will be based on comparable municipal facilities in the area.

(a) Not less than every 5 years, the parties will review the fee schedule and upon the request of either party renegotiate the fee schedule.

(b) Future fee schedule increases must be approved by Reclamation in advance of using new fee schedule.

(c) Fees collected for use of the Regional Park shall be used by the Licensee at this Regional park to develop, repay development cost, operate, maintain, and/or improve the facilities and lands, including a reasonable reserve for capital improvements and contingencies. The expenditure and commitment of revenue by the Licensee against this project may be for any reasonable Licensee purpose associated with the intent of public use and support of such use and enhancement of the lands and facilities herein described.

17. Licensee shall at all times and at its sole expense operate and maintain and make necessary repairs and replacements to the Regional Park facilities using best business practices so as not to interfere with the proper use and operation of or cause injury or damage to any property or facilities and works of the United States.

18. **Special Stipulations:** During the performance of this activity, Licensee agrees as follows;

(a) Licensee shall establish, administer, enforce, and adjudicate, including the use of sworn law enforcement officers, all applicable laws, ordinances, and operational rules as it may deem necessary to properly regulate public conduct and provide for the proper, safe, and orderly use of the lands of the United States under this License.

(b) Licensee shall establish a schedule for security or law enforcement officers to regularly patrol the Regional Park facilities for the purpose of monitoring activities on the lands of the United States under this License. This includes, but is not limited to, restricting unauthorized use of motorized vehicles on the trail, including licensed, unlicensed, recreational, and off-highway vehicles, to prevent damage to the trail and provide a safe recreational environment for Regional Park facilities users.

(c) Licensee shall install and maintain signs, barriers, gates, and other appropriate devices to prevent use of motorized vehicles by unauthorized persons on the lands of the United States under this License. Use of motorized vehicles is permitted by authorized persons for the reasonable use and enjoyment of the rights granted to other prior right holders, or for maintenance purposes.

(d) Licensee shall maintain the lands of the United States under this License and the Regional Park facilities in a



reasonable condition so as to accommodate the stated purposes of the community-wide public recreation multi-use facilities.

(e) Licensee shall provide sufficient sanitation and waste facilities, and staff to maintain and clean them, to keep the lands of the United States under this License free of litter, garbage, and debris.

**19. Facilities Management and Safety Plan**

(a) Licensee shall submit to the Authorized Officer after development of facilities but not later than twelve months (12) after execution of this License, a site management and safety plan (Plan) which shall be developed in coordination with the Authorized Officer and other affected holders of prior or underlying rights in the lands of the United States under this License.

(b) The Plan shall provide general direction for administration, operation, and maintenance, including safety procedures for that portion of the Regional Park facilities located on lands of the United States under this License.

(c) On approval by Reclamation, the Plan shall be attached to this License as an appendix, and Licensee shall manage the Regional Park facilities consistent with the Plan.

(1) Clark County and Reclamation shall meet annually or more often if requested by a Party, at a time mutually agreed to, to review the Plan, to ensure that administration, operation, maintenance, and safety procedures are adequate.

(2) If modifications to the Plan are determined to be necessary by the Authorized Officer as a result of the review, such modifications shall be developed in coordination with other affected holders of prior or underlying rights in the lands of the United States under this License.

(3) Licensee shall update the Plan to reflect agreed to modifications, if any. Upon approval by Reclamation, the revised Plan shall be attached to this License and shall supersede and replace all prior versions of the Plan.

**20. Recreation Data Report:** During the performance of this activity, Licensee agrees as follows: each calendar year, Licensee shall furnish to the Authorized Officer an annual summary of the recreation-related use and/or resources at each area for the previous calendar year. The United States will provide the forms for the report, which is currently titled ARecreation Use Data Report.

**21. Reclamation retains the right to regulate public use of the lands of the United States under this License in the interest of security, protection of the property, or the safety and welfare of persons, or as necessary to provide for such activities in support of the Parker-Davis Project as it may find necessary, including temporary closure. Reclamation will coordinate any such closure with Licensee.**

**22. EMERGENCY USE:** Reclamation and/or National Park Service may require use of the land of the United States under this License for emergency activities such as, high water releases and bank-line maintenance. In the event of a major water release from Davis Dam, the day use area and portions of the trail may be closed for safety reasons, at Reclamation's discretion.

**23. Licensee will obtain permission to use any State of Nevada lands.**

**24. The United States reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of said lands, to make investigations of all kinds, dig test pits and drill test holes, to survey for and construct reclamation and irrigation works and other structures incident to Federal Reclamation Projects, or for any purpose whatsoever. Reclamation will make every reasonable effort to keep damages to a minimum.**

**25. Each provision of this use authorization shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this use authorization shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of the use authorization as a whole.**

**FINDING OF NO SIGNIFICANT IMPACT  
(FONSI)**

**LC-06-019-FONSI**

**Laughlin Regional Heritage Greenway Trails  
North Reach**

U.S. Department of Interior  
Bureau of Reclamation  
P.O. Box 61470  
Boulder City, NV 89006-1470

Based on a thorough review of the comments received and analysis of the environmental impacts presented in the Final Environmental Assessment (EA), Reclamation has determined that the proposed action to construct a system of trails, day-use facilities, and a regional park does not constitute a major Federal action significantly affecting the quality of human environment within the project area. Therefore, an Environmental Impact Statement is not required and Reclamation is issuing this FONSI. Furthermore, based on the EA and this FONSI, Reclamation authorizes the proposed action to be conducted subject to implementation of the mitigation measures mentioned in this FONSI.

This Finding of No Significant Impact has, therefore, been prepared and is submitted to document environmental review and evaluation of the proposed action in compliance with the National Environmental Policy Act of 1969, as amended.

Prepared:

Anthony Vigio  
Environmental Protection Specialist

Date: 5-16-07

Recommended:

John C. Jones  
Environmental Compliance Group Manager

Date: 5-16-07

Approved:

John C. Jones  
Resources Management Director

Date: 5-16-07

Exhibit C

## **FINDING OF NO SIGNIFICANT IMPACT**

### **Laughlin Regional Heritage Greenway Trails -- North Reach**

**Summary:** Reclamation as lead, with the National Park Service (NPS), and the Bureau of Land Management (BLM), as cooperating agencies, prepared the Environmental Assessment (EA). The EA is to evaluate the potential environmental impacts of a proposal by Clark County to develop Regional Park with a system of trails, a day-use area, a Golf Complex, and associated facilities located mainly on Reclamation lands near the town of Laughlin, Nevada. Laughlin is a fast-growing community that is experiencing growth in its residential and visitor populations. Annual visitation to the greater Laughlin/Bullhead City resort community has reached 5 million visitors per year and the residential population of Laughlin has increased at least 25 percent since 2000. Several sections of federal land border Laughlin, but the majority of this land is not easily accessible to the public. This project proposes to expand recreational use of these lands with a system of pedestrian and equestrian trails, trailheads, day-use areas, interpretive sites, fishing nodes and transportation improvements to facilitate non-motorized access. In addition, this project would remove a paved road and restrict off highway vehicles, re-vegetate riparian areas, protect cultural sites, and provide interpretive information about the natural and cultural history of the area, and protect some of the better habitat as open space.

Reclamation had a park below Davis Dam called the Sports Men Park Campground. When the park closed, Reclamation promised to look at options to reopen the area for public recreation in the future. Reclamation does not directly provide public recreation opportunities itself. Reclamation does them through partnerships. Public law 89-72 as amended by public law 102-575 authorizes Reclamation to provide public recreation opportunities at all Reclamation projects as a secondary use of project lands and facilities.

The partnership with Clark County will meet the commitment from Reclamation to reopen the area in the future and will provide for enhanced resource protection and management.

**Purpose and Need for Proposed Action:** The purpose of this project is to diversify public recreation opportunities and protect natural and cultural resources on federal, state, and county lands in the vicinity of Laughlin, Nevada. The project is needed to improve public enjoyment of the recreational lands adjacent to the Colorado River, protect the cultural and natural resource values of these lands, and meet the recreational needs of the growing numbers of visitors and residents in the area.

**Alternative Actions:** In accordance with National Environmental Policy Act regulations, Reclamation, examined the following alternatives to the proposed action:

- No Action
- Alternative 1 (Trails, Day-Use Area) Trail system, day-use area, regional park and water trail
- Alternative 2 (Trails, Day-Use Area, and Water Trail
- Alternative 3 (Preferred Alternative) (Regional Park, Trails, Day-Use Area)

Reclamation and the cooperating agencies considered a range of actions when developing possible alternatives for the proposed project. The following actions were considered and analyzed, but ultimately dismissed because they did not fully satisfy the objectives of this planning effort and the communities' needs. Some of these alternatives were associated with

security concerns, others were economically infeasible, and others conflicted with environmental concerns.

- Recreational Vehicle Overnight Camping Facility
- Boat Storage and Launching Facility

**The Recommended Alternative:** The proposed action is to construct a Regional Park and trail system, day-use area, and park for the growing numbers of residents and visitors that come to the Laughlin area each year. The proposed Regional Park, trails, trailheads, day-use area, and golf complex would allow for public recreation on federal land that is currently difficult to access. In addition to constructing these facilities, this project proposes to remove a paved road, re-vegetate with native plants, and provide additional resource protection measures that would eliminate off-road vehicle use and other damaging activities that have adversely affected natural and cultural resources. The project will be constructed in phases as funds are available.

**Environmental Impacts:** For the Preferred Alternative, Reclamation has determined that both adverse and beneficial impacts would occur. The majority of these impacts are minor and with mitigation measures would not result in significant impacts to the environment or human health and safety. The following adverse and beneficial impacts have been identified:

- **Geology, Soils and Geologic Hazards** – There are no unique or special geologic resources in the area that would be affected by the proposed Regional Park, trail system and Day Use Area. During construction, soils would be subject to short-term, minor to moderate, localized adverse impact that would potentially increase erosion. Increased soil erosion could also cause increased river siltation as soil is washed into adjacent waterways. Overall, there would be short-term, minor adverse impacts to soils caused by construction activities. In the long-term, stabilization of soils in the project area, re-vegetation, and decrease in off-road vehicle use would have a long-term, minor, beneficial effect on soils.
- **Surface Water, Groundwater, and Jurisdictional Waters/Wetlands** – Impacts to surface water and groundwater are most likely to occur during the construction phase of the project. The impacts to surface water under the preferred alternative would be short-term, minor, and adverse. If shallow groundwater were encountered, there would be potential for chemical contamination from construction materials and vehicles. With Best Management Practices (BMPs) for water quality in place during construction, any impact to groundwater would be short-term, minor, and adverse. It is estimated that long-term, minor, adverse impacts to 0.34 acres of jurisdictional ephemeral washes and .69 acres of jurisdictional wetlands would result from the construction of the preferred alternative. In the Day-Use Area, the project is to pump up to 25 acre-feet per year from the mainstream of the Colorado River under Reclamations Colorado River Water entitlement for the proposed water body (lagoon).
- **Vegetation, Wildlife, and Special Status Species** – North Reach portion is within Sections 1 and 12. The removal of vegetation (primarily tamarisk) along the riverbank during construction may have a short-term adverse effect, as it temporarily removes riparian habitat. The area will be re-vegetated after construction is completed with native vegetation. The implementation of the Preferred Alternative would have an overall long-term, moderate, beneficial impact to vegetation and wildlife in the North Reach portion of the project area. No adverse effects are anticipated for special status species in the

North Reach area. No desert tortoises or dens were discovered in Sections 1 and 12 during tortoise surveys.

The development of recreation facilities on Sections 10 and 11 may potentially disturb suitable habitat for bicolored penstemon, a special status plant species, in desert wash areas. Any individual plants discovered during preconstruction surveys would be relocated to a suitable habitat on the project area or appropriate nursery, thus reducing the potential for direct impact. With the construction of the golf course complex within the Regional Park, there would be approximately 235 acres of desert tortoise habitat that would be impacted. The addition of the regional park in Sections 10 and 11 is expected to have a long-term, adverse impact on vegetation and wildlife.

- **Air Quality** – Potential impacts from the Preferred Alternative are expected to be localized in the immediate vicinity of the project area, short-term, minor, and adverse. However, compared with the No-Action Alternative, this alternative would reduce air pollutants in the project area in the long-term by eliminating impacts caused by informal off-road vehicle use and organized off-road vehicle racing. The Preferred Alternative, including the golf course and community facilities, is expected to have long-term, minor, and beneficial impact on air quality.
- **Soundscape** – During construction, the sounds from construction vehicles may raise the noise level in the project area slightly. However, due to the distance of the proposed recreational facilities from the Laughlin population, construction will have a minimal affect on the ambient noise experienced at local businesses and residences. Therefore, construction noise will be short-term, minor, adverse, and localized. The engine noise of boats and personal watercraft may affect individuals utilizing the proposed day-use area and trail system. The additional engine noise from vehicles at the proposed trailheads may likewise adversely affect soundscapes. However, the removal of motorized use (off-road vehicles and an existing paved road) throughout the project area would mean that any increase in engine noise associated with this alternative would be concentrated at the trailheads. In the context of Reclamation and NPS management goals for the project area, the anticipated increase in pedestrian, bicycle, and equestrian traffic would be considered a negligible adverse impact. Overall, the Preferred Alternative would have a long-term, negligible, adverse impact to soundscapes.
- **Cultural Resources** – Construction and use of the proposed trail system and associated recreational facilities will have direct and indirect adverse effects on sites that are eligible for NRHP listing. Direct impacts include those related to construction, road grading and other actions that will occur as the facilities are built. The Davis Dam contractor's camp will be adversely impacted by the proposed project and mitigation measures will be necessary. The penstock fabricating plant will also be adversely impacted by construction of the recreational facilities and impacts must be mitigated. If mitigation measures are completed, impacts to cultural resources would be reduced to acceptable levels. Four historical sites and one prehistoric site would be avoided through project design. The preferred alternative includes the development of a Treatment Plan to mitigate impacts on historic properties.
- **Access and Transportation** – It is anticipated an incremental increase in project-related traffic would not change the current level of service. Construction impacts will be short-term, minor, and adverse. After construction, the proposed trails, day-use area, and

Regional Park will provide Laughlin visitors with additional recreational opportunities that are not expected to affect the existing highway access or transportation routes within the area. The addition of the pedestrian bridge over State Route 163 and trailheads within and south of the project area would greatly facilitate access to the day-use facilities and trails from Laughlin. The Riverwalk would also serve as a continuation of the existing Riverwalk in Laughlin, which would substantially increase the amount of contiguous trails in the area. The impact to access and transportation for pedestrians, equestrians, and other non-motorized users would be long-term, moderate, and beneficial.

- **Land Use and Recreation** – The proposed facilities will provide additional outdoor recreational activities for Laughlin residents and for visitors to the Laughlin area. These opportunities include trails, trailheads, day-use facilities, access to the river for fishing, and interpretive opportunities that would focus on the relationship between the land, the river, and historic use of the area. Many of these facilities meet or exceed what was recommended in the 2004 Master Plan. Construction and use of these facilities would constitute a long-term, moderate, and beneficial impact to the community.
- **Socioeconomic Conditions** – Construction of the proposed recreational facilities associated with the Preferred Alternative would have a long-term, minor to moderate and beneficial effect on the socioeconomic situation of Laughlin residents. By expanding the activities available to visitors, visitation is likely to increase at the Laughlin resorts. In turn, jobs would be created and businesses would increase their revenues.
- **Environmental Justice** – A significant percentage of the largest minority population in the Laughlin area (Hispanic or Latino) are living below the poverty level (44 percent). If the trail and day-use area are constructed, the improved public access and no-fee facilities may provide supplemental recreation opportunities for low-income and minority populations. These facilities are also expected to draw additional visitors and residents to the area, which may provide additional employment opportunities for the minority and low-income populations of Laughlin. This would be a long-term, negligible to minor, beneficial impact.
- **Visual Resources** – Because most of the day-use area and trail system designs would be a part of the natural landscape and would involve plantings of native vegetation and removal of pavement, no adverse impacts to the visual character of this area are anticipated. The visual character of some areas may be improved from existing conditions if the proposed habitat restoration is placed in areas that have previously been cleared of natural vegetation, or contain non-native plants. This would be a long-term, negligible, beneficial impact. Placement of the pedestrian bridge would constitute a long-term, localized, minor, adverse impact.
- **Odor** – The equestrian trailhead may be a source of odor from stock-related odors such as hay and other feed, leather, droppings and the animals themselves. Droppings along the trails will emit odor and are expected to dry quickly in the desert climate. It is anticipated that some recreational users and the equestrian users in particular, consider these odors a part of the western outdoor landscape, while others may find them disagreeable. This impact is considered long term, minor to moderate at times, and adverse. Also, odors may be noticeable at the Regional Park because the treatment facility is nearby. This could deter some individuals from using it and would constitute a long-term, minor, and localized adverse effect.

### **Public Involvement, Consultation, and Coordination**

The project proposal was provided to the public and other agencies for comment during a 30 day scoping and comment period from July 2, 2006 through August 13, 2006. As part of the public involvement process, a Legal Notice was posted inviting public comment on July 2, 2006, in the newspaper of record, the Mohave Daily News. A copy of the meeting notice was posted at the Laughlin Town Manager's offices. The public was invited to comment via email, mail, comment form, and orally.

During this public comment period, a scoping meeting was held in Laughlin on July 13, 2006 to inform the public of this potential undertaking and to solicit public comments, questions, and concerns. At this meeting, comments, questions and concerns were received.

### **Draft EA Review**

The Draft EA was provided to the public and other agencies for comment during a 30-day comment period from December 1, 2006 through December 30, 2006. In addition as part of the public involvement process, the agency prepared and published a Legal Notice inviting public comment on December 1, 2006 in the newspaper of record, the Mohave Daily News. A copy of the meeting notice was posted at the Laughlin Town Manager's offices. The public was invited to comment via email, mail, comment form, and orally.

During this public comment period, a Draft EA public meeting was held in Laughlin on December 15, 2006 to solicit public comment regarding the document.

A total of 11 comments were recorded from oral comments received during the Draft EA public meeting or on comment forms. No email or mail-in comments were received.

### **Mitigation Measure**

The following mitigation measures required to reduce impacts to insignificant levels.

### **General Considerations**

1. Subject to the conditions and stipulations agreed to in the Biological Opinion (BO) and Finding of No Significant Impact (FONSI) by Reclamation, Reclamation will enter into an agreement with Clark County, which will allow Clark County to develop the Trails and Regional Park that includes a golf complex on federal land. The land use agreement will include and incorporate the BO and FONSI as part of the agreement, and will require Clark County to complete or pay for the compliance of all mitigation measures in the BO and FONSI under the guidance of Reclamation.
2. Ensure that the project remains confined within the parameters established in the compliance documents and that mitigation measures would be properly implemented.
3. Construction zones would be identified and flagged before beginning the construction work and all disturbances would be confined to the flagged areas. All project personnel would be instructed that their activities must be confined to locations within flagged areas and all equipment and materials must remain within these areas. Disturbance beyond the

actual construction zone would be prohibited. This does not exclude necessary temporary structures such as erosion-control fencing.

4. All tools, equipment, barricades, signs, surplus materials, and rubbish would be removed from the project work limits upon project completion. Any asphalt or concrete surfaces damaged due to work on the project would be repaired to original condition. All demolition debris would be removed from the project site, including all visible concrete and metal pieces. All debris will be placed within an existing landfill approved by Reclamation.
5. (BMPs) to reduce spills would be utilized during refueling and other activities that may release petroleum products into the environment.
6. A hazardous spill plan would be in place, stating what actions would be taken in the case of a spill and preventive measures to be implemented such as the placement of refueling facilities, storage, and handling of hazardous materials, etc.
7. All fuel, transmission, or brake fluid leaks, or other hazardous waste leaks, spills, or releases would be reported immediately to the designated Environmental Manager. The Environmental Manager would be responsible for spill material removal and disposal to an approved offsite landfill and, if necessary, would notify Mr. Jeff Smith with the Bureau of Reclamation at 702-293-8060, or Ms. Nancy Rolfe at 702-293-8382.
8. All equipment on the project would be maintained in a clean and well-functioning state to avoid or minimize contamination from automotive fluids; all equipment would be checked daily.
9. Staging for construction vehicles and equipment would be located in previously disturbed area, outside of high visitor use areas, would be clearly identified in advance, and would be approved by Reclamation.
10. Impacts and potential compaction and erosion of bare soils would be minimized in all disturbed areas by salvaging the top 4 inches of topsoil before construction begins, storing that topsoil in a designated area with construction fence around it, and then placing the salvaged topsoil on restoration areas. After topsoil is replaced, it would be given a fine spray of water to help settle the soil and uncover rock in the soil, and bring up the soil fines to create a crust to help prevent wind and water erosion. The salvaged material may be windrowed as well to assist with erosion prevention. Only soils known to be free of weeds and invasive species would be used during restoration.
11. No vehicle or equipment tracks would be allowed to remain after construction is complete. At a minimum, all disturbed areas would be raked out prior to water sprinkling to reduce the appearance of vehicle tracks and discourage future re-disturbance.

## **Water Quality**

1. BMPs for drainage and sediment control would be implemented to prevent or reduce nonpoint source pollution and minimize soil loss and sedimentation in drainage areas. Use of BMPs in the project area for drainage area protection would include all or some of the following actions, depending on site-specific requirements:



2. Keep disturbed areas as small as practical to minimize exposed soil and the potential for erosion.
3. Locate waste and excess excavated materials outside drainages to avoid sedimentation.
4. Install silt fences, temporary earthen berms, temporary water bars, sediment traps, stone check dams, or other equivalent measures (including installing erosion-control measures around the perimeter of stockpiled fill material) as necessary, prior to construction.
5. Conduct regular site inspections during the construction period to ensure that erosion-control measures were properly installed and are functioning effectively.
6. Store, use, and dispose chemicals, fuels, and other toxic materials in an appropriate manner.
7. Re-vegetate disturbed areas as soon as possible after construction is completed.

### **Flooding**

Construct stormwater control facilities

### **Filing Jurisdictional Waters**

1. Comply with all mitigation measures mentioned in the Army Corps of Engineer Permit.
2. Re-vegetation of all disturbed sites using native plants.
3. BMP's to prevent or reduce non-point source pollution and minimize soil loss and sedimentation into wetlands associated with the proposed lagoon and other shoreline features would include all or some of the following actions, depending on site-specific requirements:
  - a. Keep disturbed areas as small as practical to minimize exposed soil and the potential for erosion.
  - b. Locate waste and excess excavated materials outside drainages to avoid sedimentation.
  - c. Install silt fences, temporary earthen berms, temporary water bars, sediment traps, stone check dams, or other equivalent measures (including installing erosion-control measures around the perimeter of stockpiled fill material) as necessary, prior to construction.
  - d. Conduct regular site inspections during the construction period to ensure that erosion-control measures were properly installed and are functioning effectively.

- e. Store, use, and dispose chemicals, fuels, and other toxic materials in an appropriate manner.
- f. Re-vegetate disturbed areas as soon as possible after construction is completed.

### **Desert Tortoise (*Gopherus agassizii*)**

#### **I. Amount of Take**

Based on the analysis of effects provided above, measures proposed by Reclamation, and anticipated project duration; the Service anticipates that the following take could occur as a result of the proposed action:

1. The Service estimates that no more than one desert tortoise would be killed or injured as a result of the proposed project including visitor use after construction is completed.
2. All desert tortoises located in harms way in work areas may be captured and moved by an authorized biologist. Based on the timing and duration of the project and desert tortoise survey data, the Service estimates that no more than two desert tortoises will be taken (i.e. other than killed or injured) as a result of project activities.
3. No desert tortoise eggs may be destroyed during project activities, although an unknown number of tortoise eggs may be affected (i.e. moved off the action area into undisturbed habitat by the authorized biologist).
4. An unknown number of desert tortoises may be preyed upon by ravens or other subsidized desert tortoise predators drawn to trash in the project area.

#### **II. Effect of the Take**

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the species.

#### **III. Reasonable and Prudent Measures**

The Service believes that the following reasonable and prudent measures are necessary and appropriate to minimize take of desert tortoise:

1. Reclamation shall ensure that Clark County implement measures to minimize injury or mortality of desert tortoises as a result of project activities.
2. Reclamation shall ensure that Clark County implement measures to minimize predation on desert tortoises by predators drawn to the project area.
3. Reclamation shall ensure that Clark County implement measures to minimize destruction of desert tortoise habitat, such as soil compaction, erosion, introduction of non-native invasive

plants, or crushed vegetation, due to project activities.

4. Reclamation shall ensure that Clark County implement measures to ensure compliance with the reasonable and prudent measures, terms and conditions, reporting requirements, and reinitiation requirements in this biological opinion.

#### **IV. Terms and Conditions**

In order to be exempt from the prohibitions of Section 9 of the Act, Reclamation will ensure that Clark County must fully comply with the following terms and conditions, which implement the reasonable and prudent measures described above.

1. To implement Reasonable and Prudent Measure Number 1, Reclamation shall ensure that Clark County implement the following measures to minimize mortality or injury of the desert tortoise:
  - a. Reclamation shall ensure that Clark County obtain an authorized desert tortoise biologist is on-site during construction activities, with exception of work activities in the proposed day-use area, river walk trail, and any other areas in Sections 1 and 12 that do not have desert tortoise habitat, for the duration of the project. In accordance with Procedures for Endangered Species Act Compliance for the Mojave Desert Tortoise (Service 1992), an authorized desert tortoise biologist should possess a bachelor's degree in biology, ecology, wildlife biology, herpetology, or closely related fields as determined by the Service. The biologist must have demonstrated prior field experience using accepted resource agency techniques to survey for desert tortoises and tortoise sign, which should include a minimum of 60 days field experience. All tortoise biologists shall comply with the Service approved handling protocol (DTC 1994, revised 1999). In addition, the biologist shall have the ability to recognize and accurately record survey results and must be familiar with the terms and conditions of the biological opinion. Potential biologists and monitors shall submit a resume to Reclamation for review and approval.
  - b. A desert tortoise education program shall be presented to all personnel onsite during construction of the proposed project. The program will include information on the biology and distribution of the desert tortoise, its legal status and occurrence in the proposed project area, the definition of "take" and associated penalties, the measures designed to minimize the effects of construction activities, methods employees can use to implement the measures, and reporting procedures to be used when desert tortoises are encountered. The program shall instruct participants to report all observations of listed species and their sign during construction activities to the authorized biologist. Personnel also will be instructed to check under vehicles before moving them as tortoises often seek shelter under parked vehicles.
  - c. All areas to be disturbed shall have boundaries flagged before beginning the activity and all disturbances shall be confined to the flagged areas. All project personnel will be instructed that their activities must be confined to locations within flagged areas. Disturbance beyond the actual construction zone will be prohibited.

- d. The project area, with the exception of the proposed day-use area, river walk trail, and any other areas that do not have desert tortoise habitat, shall be surveyed by an authorized biologist for desert tortoises and their burrows immediately prior (within 24 hours) to the onset of construction. The surveys will provide 100 percent coverage of the project construction area. All potential tortoise burrows will be identified and flagged for avoidance or excavation. All desert tortoise surveys, handling of desert tortoises, and burrow excavation will be performed only by an authorized biologist.
- e. Special precautions shall be taken to ensure that desert tortoises are not harmed as a result of their capture and movement during extreme temperatures (i.e. air temperatures below 55 F or above 95 F). Under such adverse conditions, tortoises captured will be monitored continually by an authorized biologist until the tortoise exhibits normal behavior. If a desert tortoise shows signs of heat stress, procedures will be implemented as identified in Service approved protocols (Desert Tortoise Council 1994, revised 1999).
- f. All burrows located within areas proposed for disturbance, whether occupied or vacant, shall be excavated by a qualified biologist and collapsed or blocked to prevent desert tortoise re-entry. All burrows will be excavated with hand tools to allow removal of desert tortoises or desert tortoise eggs. All desert tortoise handling and excavations, including nests will be conducted by a qualified desert tortoise biologist in accordance with Service approved protocol (Desert Tortoise Council 1994, revised 1999).
- g. All located desert tortoises and desert tortoise eggs shall be relocated offsite into undisturbed habitat. Reclamation will work with the Service to identify an appropriate site north of Highway 163.
- h. The onsite biologist shall record each observed or handled desert tortoise. Information will include the following: Location, date and time of observation, whether the tortoise was handled, general health and whether it voided its bladder, location tortoise was moved from and location moved to, and unique physical characteristics of each tortoise.
- i. Project activities that may endanger a tortoise shall cease if a tortoise is found on a project site. Project activities will resume after the qualified biologist removes the tortoise from danger or after the tortoise has moved to a safe area.
- j. A speed limit of 25 miles per hour shall be maintained while on the construction site, access roads, and storage areas. This effort will reduce dust and allow a safe speed at which personnel can observe desert tortoises in the road.
- k. Any pipe, culverts, or similar structures with a diameter greater than 3 inches that are stored on the construction site (within desert tortoise habitat), for one or more nights, shall be inspected for tortoises before the material is moved, buried or capped. As an alternative, all such structures may be capped before being stored on the construction site.

1. During the period of highest tortoise activity (approximately March 1 through October 31), all trenches and other excavations with side slopes steeper than a 1 ft rise to 3 ft length, shall be immediately backfilled prior to being left unattended, or: (1) fenced with tortoise proof fencing, (2) covered with tortoise proof fencing, (3) covered with plywood or a similarly impassable material, or (4) constructed with escape ramps at each end of the trench and every 1,000 ft in between (at a minimum). All coverings and fences will have zero ground clearance. If alternative (4) is selected, the trench or other excavation will be inspected periodically and following periods of substantial rainfall to ensure structural integrity and that escape ramps are functional. An open trench or other excavation will be inspected for entrapped animals immediately prior to backfilling. If, at any time, a tortoise is discovered within a trench, all activity associated with that trench will cease until an authorized biologist has removed the tortoise in accordance with Service approved guidelines (Desert Tortoise Council 1994, revised 1999).

2. To implement Reasonable and Prudent Measure Number 2, Reclamation, shall ensure that Clark County implement the following measures to minimize predation on tortoises by ravens or other desert tortoise predators attracted to the project area:

Trash and food items shall be disposed properly in predator-proof containers with resealing lids. Trash containers will be emptied and waste will be removed from the project area daily. Trash removal reduces the attractiveness of the area to opportunistic predator such as desert kit fox, coyotes, and common ravens.

3. To implement Reasonable and Prudent Measure Number 3, Reclamation, shall ensure that Clark County implement the following measures to minimize loss and long-term degradation and fragmentation of desert tortoise habitat, such as soil compaction, erosion, crushed vegetation, introduction of weeds or contaminants as a result of construction activities:

- a. Where feasible, disturbance shall be avoided by moving the trail footprint around sensitive areas. If disturbance is unavoidable, Reclamation, will, if possible, either minimize the area of disturbance or replace affected vegetation in-kind onsite.
- b. All construction, operation and maintenance activities shall be conducted in a manner that minimizes disturbance to vegetation and drainage channels.
- c. Cross-country travel and travel outside construction zones shall be prohibited.
- d. Prior to surface disturbing activities associated with the proposed project, Reclamation shall ensure payment by the project proponent of remuneration fees to be deposited into the Desert Tortoise Public Lands Conservation Fund (account number 730-9999-2315) (section 7 Account) for compensation of desert tortoise habitat loss.
- e. The proposed project will disturb 235 acres of desert tortoise habitat on federal lands. The compensation rate for disturbance to desert tortoise habitat in project area is \$723 per acre. These fees will be indexed for inflation and will be adjusted accordingly for the year the fees paid. Fees for disturbance of federal lands are paid into the Clark County Section 7 account. The next rate adjustment will occur on March 1, 2008. If

paid prior to March 1, 2008, the total section 7 fees due for disturbance of federal lands would be \$169,905. The Section 7 payments shall be accompanied by the Section 7 Fee Payment Form, and completed by the payee. The project proponent or applicant may receive credit for payment of such fees and deduct such costs from desert tortoise impact fees charged by local government entities. Payment shall be by certified check or money order payable to Clark County and delivered to:

Clark County Desert Conservation Program  
c/o Dept. of Air Quality and Environmental Management  
Clark County Government Center  
500 S. Grand Central Parkway, first floor (front counter)  
Las Vegas, Nevada 89106  
(702) 455-5821

4. To implement Reasonable and Prudent Measure Number 4, Reclamation shall ensure that Clark County implement the following measures to ensure compliance with the reasonable and prudent measures, terms and conditions, reporting requirement, and reinitiation requirements contained in this biological opinion:
  - a. Reclamation shall designate an authorized desert tortoise biologist who will be responsible for overseeing compliance with protective stipulations for the desert tortoise and coordinating with the Service. The authorized biologist shall have the authority to halt activities that may be in violation of the stipulations.
  - b. The Authorized biologist shall record each observation of desert tortoise handled. Information shall include the following: Location, date and time of observation; whether tortoise was handled, general health and whether it voided its bladder; location tortoise was moved from and location moved to; and unique physical characteristics of each tortoise. A final report shall be submitted to the Service's Southern Nevada Field Office in Las Vegas, Nevada, within 90 days of completion of the project.

## **V. Conclusion**

The Service estimates that no more than one desert tortoise would be killed or injured as a result of the proposed project including visitor use after construction is completed. The Service also estimates that no more than two tortoises may be taken by capture and moved out of harms way during the project; an unknown number of desert tortoises are anticipated to be taken in the form of indirect mortality through predation by ravens drawn to the project area; and no desert tortoise eggs may be destroyed during project activities, although an unknown number of tortoise eggs may be affected (i.e. moved off the action area into undisturbed habitat by the authorized biologist).

In addition, up to 235 acres of low-density desert tortoise habitat may be lost as a result of project activities. The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. If, during the course of the action, the level of incidental take or loss of habitat identified is exceeded, such incidental take and habitat loss represents new information requiring reinitiation of

consultation and review of the reasonable and prudent measures provided. Reclamation must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

## **VI. Reporting Requirements**

Upon locating a dead or injured, endangered or threatened species, initial notification must be made to the Service's Southern Nevada Field Office in Las Vegas, Nevada, at (702)515-5230. Care should be taken in handling sick or injured desert tortoises to ensure effective treatment; care should be taken for the handling of dead specimens to preserve biological material in the best possible state for later analysis of cause of death. In conjunction with the care of injured desert tortoises or preservation of biological materials from a dead animal, the finder has the responsibility to carry out instructions provided by the Service to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed. All deaths, injuries, and illnesses of desert tortoises, whether associated with project activities or not, will be summarized in an annual report.

The following actions should be taken for injured or dead tortoises if directed by the Service:

1. Injured desert tortoises shall be delivered to any qualified veterinarian for appropriate treatment or disposal.
2. Dead desert tortoises suitable for preparation as museum specimens shall be frozen immediately and provided to an institution holding appropriate Federal and State permits per their instructions.
3. Should no institutions want the desert tortoise specimens, or if it is determined that they are too damaged (crushed, spoiled, etc.) for preparation as a museum specimen, then they may be buried away from the project area or cremated, upon authorization by the Service.
4. Reclamation or the project proponent shall bear the cost of any required treatment of injured desert tortoises or cremation of dead desert tortoises.
5. Should injured desert tortoises be treated by a veterinarian and survive, they may be transferred as directed by the Service.

## **Migratory Bird Act of 1918**

1. In compliance with the Migratory Bird Act of 1918, habitat-altering projects or portions of projects should be scheduled outside bird breeding season. In upland desert habitats and ephemeral washes containing upland species, the breeding season generally occurs between March 15 and July 30.
2. For work occurring during the nesting period, a qualified biologist will survey the area for nests within 15 days prior to initial grading and vegetation removal. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests (containing eggs or young) are found, a 500-foot buffer area would be avoided until the young birds fledge.

### **Southwestern Willow Flycatcher**

1. Existing healthy riparian vegetation and mature trees present in the Sportsmen's Park area would be protected from construction disturbance.
2. Vegetation clearing activities associated with riparian habitat adjacent to the Colorado River would occur outside the Southwestern Willow Flycatcher breeding season. The Flycatcher's breeding season is May through August.
3. Surveys for the Southwestern Willow Flycatcher would be conducted by a qualified biologist one to three days prior to the removal of riparian vegetation. If nesting Flycatchers were detected in the action area, work activities would temporarily stop until the chicks have fledged.

### **Bonytail chub and Razorback sucker**

Construction-generated runoff or silt from vegetation removal could affect Bonytail chub and Razorback sucker populations in the river segment adjacent to the project and downstream unless mitigated. Other potential affects include the increase in access and use of the river for recreation, and thus direct disturbance to the chub and sucker. Reclamation proposes the following minimization measures for the Bonytail chub and Razorback sucker:

1. During construction, keep disturbed areas as small as practical to minimize exposed soil and the potential for erosion.
2. Locate and properly dispose of waste and excess excavated materials outside wash drainages to avoid sedimentation.
3. Install silt fences, temporary earthen berms, temporary water bars, sediment traps, stone check dams, or other equivalent measures (including installing erosion-control measures around the perimeter of stockpiled fill material) as necessary, prior to construction.
4. Conduct regular site inspections during the construction period to ensure that erosion-control measures were properly installed and are functioning effectively.
5. Store, use, and dispose chemicals, fuels, and other toxic materials in an appropriate manner.
6. Vegetation removal along the riparian habitat adjacent to the Colorado River would be scheduled to occur between October and April to the greatest extent practicable to avoid late summer thunderstorm/flood events, and minimize the potential for work activities to result in runoff to the river. Alternatively, if vegetation removal is conducted between October and April, sedimentation barriers would be used between the work site and the Colorado River to minimize runoff to the river. Native vegetation would be planted in disturbed areas as soon as possible after construction is completed.



7. No construction below the ordinary high water line during the spawning season of each species (January -June).
8. If the Lagoon is connected to the river then nets would be used as barriers between the construction site and the Colorado River. These nets would remain in place for the duration of construction work adjacent to the river occurring in the vicinity of the day-use area.
9. All vehicles, fuels, and other hazardous materials would be stored away from the Colorado River in such a way that any spills of toxic materials would not drain into the river.
10. Equipment for dredging, placement of substrate materials, or other construction activities would be in good condition with no significant leaks of fuel or other substances that could be toxic to fish.
11. Washing of equipment would not be conducted where wash water could drain into the river. This is especially important for equipment involved with pouring concrete. Washing stations would be set back away from the river and suitably diked to prevent runoff.
12. Materials to absorb small spills of toxic materials would be available on site.
13. Two interpretive panels would be placed near fishing piers and along the river walk trail. The interpretive panels would include the description of the Bonytail chub and Razorback sucker, the reasons why these species are federally endangered, and how the public can help protect these species.

#### **Noxious Weeds**

1. Re-vegetation work would require the contractor to place desert soil, conserved during construction, along the corridor. The contractor would be responsible for collecting seeds of native species in the project area for propagation purposes. The propagated plants can then potentially be used to re-vegetate disturbed areas.
2. When necessary, desert soil replacement techniques would be used to re-establish desert crust surfaces and minimize impacts from invasive plant species that often become established in disturbed soils along the roadway.
3. Reclaimed areas would be monitored after construction to determine if Reclamation efforts are successful or if additional remedial actions are necessary. Remedial actions could include installation of erosion-control structures and controlling nonnative plant species.

#### **Particulate Matter**

Application of water to construction areas to control dust and particulates.

## **Dust**

Construction activities would be coupled with water sprinkling or a palliative, as needed, to reduce fugitive dust plumes.

## **Emissions**

Idling of construction vehicles would be limited to reduce construction equipment emissions.

## **Cultural Resources**

### **1. Archaeological and historical period sites.**

- a. Data recovery at two known historical sites affected by the proposed project. Interpretive information and monitoring after construction to assess visitor impacts.
- b. A Memorandum of Agreement for the recovery of significant information from sites 26CK6658 and 25CK6650 and the avoidance of sites 26CK6922B, 26CK6922D, and 26CK6922E will be executed between Reclamation, the Nevada State Historic Preservation Officer, the Advisory Council on Historical Preservation, Clark County, and other parties, agreeing to develop and implement a treatment plan for these historic properties. All fieldwork will be completed to Reclamation's satisfaction, prior to any ground disturbing actions around any known cultural sites.
- c. Should unknown archeological resources be uncovered during construction, work would be halted in the discovery area, the site secured, and Reclamation would consult according to 36 CFR 800.13 and, as appropriate, provisions of the Native American Graves Protection and Repatriation Act of 1990. In compliance with the Native American Graves Protection and Repatriation Act of 1990, Reclamation would also notify and consult representatives of American Indian tribes, likely to be culturally affiliated, for the proper treatment of human remains, funerary, and sacred objects should these be discovered during the project.
- d. Construction crews should be educated regarding procedures if subsurface cultural resources are encountered during construction.

### **2. Native American Religious Concerns**

Consult with the appropriate Native American tribes who have religious and cultural ties to sites within the project area.

### **Soundscape**

1. Construction activities will take place during daylight working hours. Contractors would be required to properly maintain construction equipment (i.e., mufflers) to minimize noise.
2. Restrict boat and personal watercraft access in vicinity of lagoon and fishing nodes.



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Nevada Fish and Wildlife Office

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Reno, Nevada 89502

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5-15 82-2

May 7, 2007

File No. 1-5-07-F-458

IC19-050

### Memorandum

To: Director, Resource Management Office, Lower Colorado Regional Office, Bureau of Reclamation, Boulder City, Nevada

From: Field Supervisor, Nevada Fish and Wildlife Office, Reno, Nevada

Subject: Biological Opinion for the Proposed Laughlin Regional Heritage Greenway Trail System in Clark County, Nevada

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This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion based on our review of the proposed Laughlin Regional Heritage Greenway Trail System and its possible effects on the desert tortoise (*Gopherus agassizii*) (Mojave population), a species listed as threatened under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). In addition, you requested our concurrence that the subject project *may affect but is not likely to adversely affect* the federally listed as endangered bonytail chub (*Gila elegans*), razorback sucker (*Xyrauchen texanus*), and southwestern willow flycatcher (*Empidonax traillii extimus*). The action area for the proposed project is located primarily on Bureau of Reclamation (Reclamation) land. The action area also includes Bureau of Land Management (BLM), National Park Service (NPS), Clark County, and State of Nevada lands. Reclamation is the lead Federal agency for compliance under section 7 of the Act. No critical habitat has been designated in the action area and therefore, no effects are anticipated on critical habitat as a result of the proposed action.

This biological opinion and informal consultation are issued in accordance with section 7 of the Act and based on information provided in the Reclamation memorandum to the Service received on November 9, 2006; the biological assessment for the subject project received on December 5, 2006 (Reclamation 2006); a site visit to the action area conducted by Service and Reclamation biologists on January 11, 2007; electronic mail between Service and Reclamation staff; discussions between Service and Reclamation staff; and our files. A complete administrative record of this consultation is on file in the Service's Southern Nevada Field Office located in Las Vegas, Nevada.

TAKE PRIDE  
IN AMERICA

10/10/07

### Informal Consultation

This informal consultation addresses work activities proposed in the project's North Reach Area and their possible impacts to the federally listed as endangered bonytail chub, razorback sucker, and southwestern willow flycatcher. The North Reach Area borders a portion of the Colorado River immediately downstream of Davis Dam in sections 1 and 12 on Reclamation and NPS lands (Figure 1). A Day-Use Area, Discovery Site, Discovery Site Edge Beach Front, trailheads, three fishing locations, and a river walk are proposed for the North Reach Area. Reclamation and NPS estimate activities in the North Reach Area would be completed in phases as funding becomes available.

The Day-Use Area (23 acres) would be located on a former campground known as Sportsman's Park south of Davis Dam. Sportsman's Park would be redeveloped to accommodate 200 parking spaces for recreational and passenger vehicles as well as several small recreational structures, including a child's play area, an open play area, shade structures, a concession building, restrooms, signs and lighting. In addition, a lagoon would be located approximately 125 feet (ft) from the Colorado River and have a surface area of approximately 2.7 acres. Approximately 13,100 cubic yards of material would be excavated to construct this feature. The excavated material would be reused onsite as fill material. The final depth of the lagoon would vary, but it is expected to be an average of 3 ft deep. Depending on funding, a stream may be located west of the lagoon and measure approximately 1,165 ft long with an average width of 3 feet. The stream and lagoon would be lined with an impervious layer to prevent water loss through percolation. Water levels at the lagoon and stream would be maintained by pumping up to 25 acre-ft of water per year from a ground water well. This amount of pumping would have an insignificant effect on water levels in the Colorado River. Native riparian vegetation would be planted along the lagoon shoreline.

A river walk would follow the approximate alignment of the existing roadway as it parallels the Colorado River from State Route 163, from Trailhead 2 to the proposed Day-Use Area, a distance of approximately 1.4 miles. The river walk would include clearing approximately 3.3 acres of vegetation adjacent to the Colorado River. This habitat consists of a 20-ft (6.1-meter) band of riparian vegetation consisting primarily of tamarisk (*Tamarix* sp.), quailbush (*Atriplex lentiformis*), and arrowweed (*Pluchea sericea*) with an occasional honey mesquite (*Prosopis glandulosa*). After the trail is completed, native riparian plant species would be replanted along the river walk.

The Discovery Site, a cultural and historical interpretive center, would be constructed on 2 acres of previously disturbed land at the historic Davis Dam contractor's camp approximately 0.75 miles north of Trailhead 2. Discovery Site amenities may include trail signs, shade structures, benches, potable water, and lighting. Unpaved surfaces at the Discovery Site would be revegetated with native plants. In addition, Reclamation is considering the development of a Discovery Site River Edge Beach Front in section 1. This would include approximately 2,000 linear ft of bank line along the Colorado River. Grading would be required to develop the

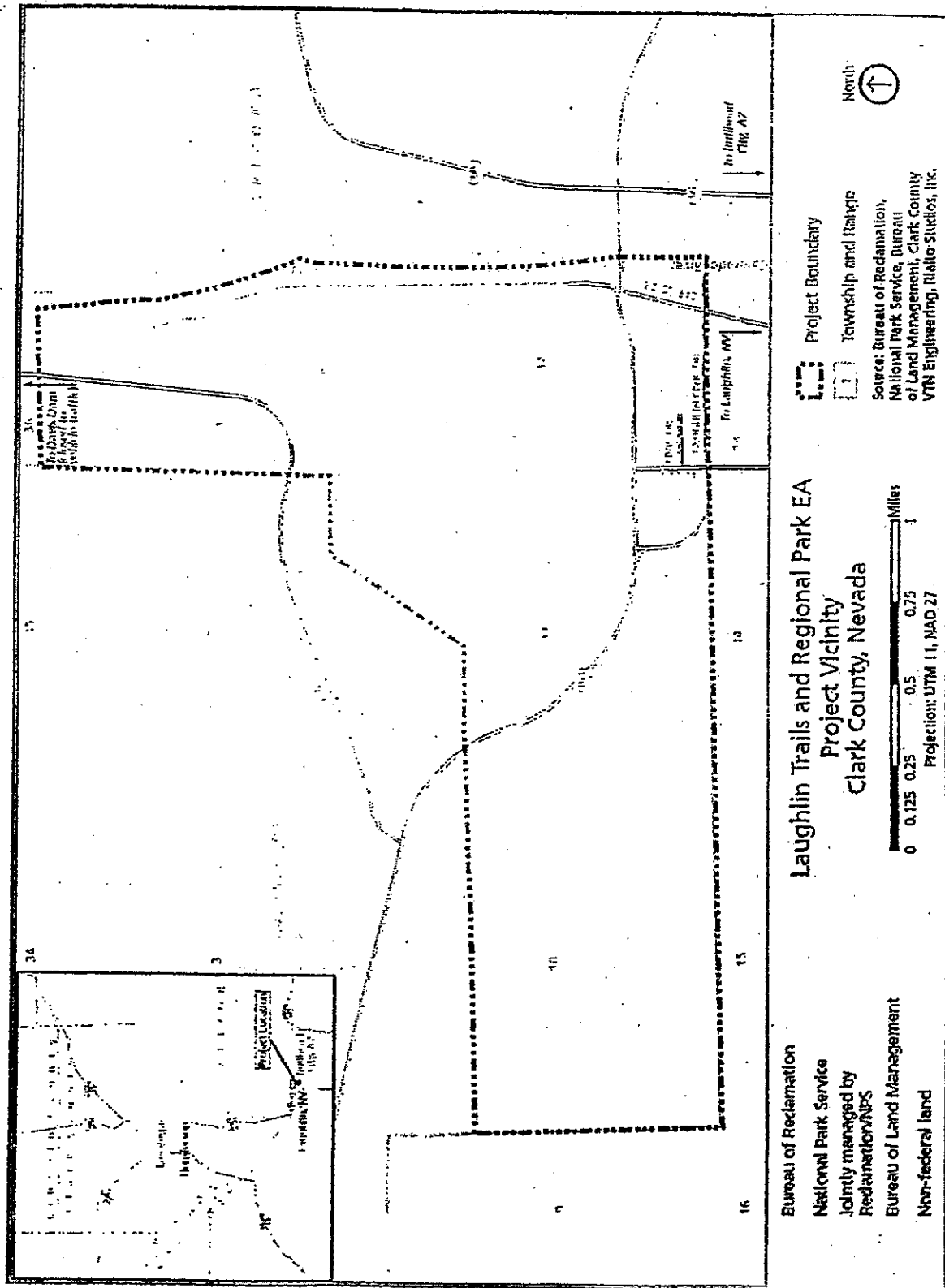


Figure 1. Laughlin Regional Park and Regional Heritage Greenway Trails-North Reach Project Location

beach front and includes removal of the existing roadway fill above the flood stage. The grading would establish a 12 ft horizontal to 1 ft vertical beach slope from an elevation of 510 ft to the west to a catch point at existing natural ground elevation. The River bench would be stabilized, and the beach front would be transected with ridgelines supplemented with boulders and appropriate riparian planting for erosion control and wildlife habitat. The Discovery Site River Edge Beach Front would consist of amenities such as ADA (Americans with Disabilities Act) accessible trails and natural areas, shade shelters and interpretive signage.

Fishing nodes would be constructed along the Colorado River at three locations: 1) at the eastern end of the Day-Use Area; 2) between the Day-Use Area and the Discovery Site; and 3) at a river access point adjacent to Trailhead 2. More details on the Trailhead 2 and other trailheads are on page ten of the biological opinion.

### **Bonytail chub and razorback sucker**

Both species are present in the adjacent river segment and downstream from the proposed project. Upstream from the project, Lake Mohave is stocked with the bonytail chub and razorback sucker. Although in low numbers, razorback suckers are known to get entrained within Davis Dam but successfully get through the power plant turbines to travel downstream in the Colorado River (G. Mueller, U.S. Geological Survey, pers. comm. 2004). There are no data to support the premise that bonytail chubs pass through Davis Dam; however, it is likely adults pass through Davis Dam but remain undetectable because they are so few in number (S. Goodchild, U.S. Fish and Wildlife Service, pers. comm. 2007). Furthermore, bonytail chubs are considered mainstem river species and waters adjacent to the project area are in their historic range and most likely would support this species. Downstream from the proposed project the bonytail chub and razorback sucker occur in Lake Havasu; and downstream the young suckers and chub utilize gravelly shorelines or shoals and shallower, ponding water in pools and eddies with sand substrate.

Construction-generated runoff or silt from vegetation removal could affect bonytail chub and razorback sucker populations in the river segment adjacent to the project and downstream unless mitigated. Other potential affects include the increase in access and use of the river for recreation, and thus direct disturbance to the chub and sucker. Reclamation and NPS propose the following minimization measures for the bonytail chub and razorback sucker:

1. During construction, keep disturbed areas as small as practical to minimize exposed soil and the potential for erosion.
2. Locate and properly dispose of waste and excess excavated materials outside wash drainages to avoid sedimentation.
3. Install silt fences, temporary earthen berms, temporary water bars, sediment traps, stone check dams, or other equivalent measures (including installing erosion-control measures around the perimeter of stockpiled fill material) as necessary, prior to construction.

4. Conduct regular site inspections during the construction period to ensure that erosion-control measures were properly installed and are functioning effectively.
5. Store, use, and dispose chemicals, fuels, and other toxic materials in an appropriate manner.
6. Vegetation removal along the riparian habitat adjacent to the Colorado River would be scheduled to occur between October and April to the greatest extent practicable to avoid late summer thunderstorm/flood events, and minimize the potential for work activities to result in runoff to the river. Alternatively, if vegetation removal is conducted between October and April, sedimentation barriers would be used between the work site and the Colorado River to minimize runoff to the river. Native vegetation would be planted in disturbed areas as soon as possible after construction is completed.
7. No construction below the ordinary high water line during the spawning season of each species (January - June).
8. After review of the final design of the lagoon, Reclamation would determine whether silt fences or other equivalent measures are needed between the lagoon construction site and the Colorado River. If Reclamation determines that silt fences or other equivalent measures are needed to minimize the potential of work activities to result in runoff to the river, these measures would be implemented prior to the start of lagoon work activities and remain in place for the duration of the construction work. Excavated material would be placed sufficient distance from the Colorado River to avoid runoff to the river.
9. All vehicles, fuels, and other hazardous materials would be stored away from the Colorado River in such a way that any spills of toxic materials would not drain into the river.
10. Equipment for dredging, placement of substrate materials, or other construction activities would be in good condition with no significant leaks of fuel or other substances that could be toxic to fish.
11. Washing of equipment would not be conducted where wash water could drain into the river. This is especially important for equipment involved with pouring concrete. Washing stations would be set back away from the river and suitably diked to prevent runoff.
12. Materials to absorb small spills of toxic materials would be available on site.
13. Two interpretive panels would be placed near fishing piers and along the river walk trail. The interpretive panels would include the description of the bonytail chub and razorback sucker, the reasons why these species are federally endangered, and how the public can help protect these species.



In consideration of the above measures and anticipated potential effects, Reclamation and NPS determined that the proposed project *may affect, but is not likely to adversely affect* the bonytail chub and razorback sucker. The Service agrees with this determination.

### **Southwestern willow flycatcher**

There are no records of nesting southwestern willow flycatchers in the action area. The southwestern willow flycatcher prefers dense stands of intermediate sized shrubs and trees such as willows (*Salix gooddingii*), seepwillow (*Baccharis* spp.), or arrowweed with an overstory of larger trees such as cottonwoods (*Populus fremontii*). Generally, suitable habitat for the flycatcher consists of dense mesic riparian shrub and tree communities with an area of at least 0.1 hectares in size and floodplains large enough to accommodate riparian habitat of at least 10 meters wide (Service 2002). The action area contains mostly tamarisk and exhibits low stature, less than 75 percent canopy cover. Although flycatchers are known to use tamarisk for nesting, the action area does not contain optimal nesting habitat because of its narrow band of vegetation (6.1 meters) and subsequently large edge to interior ratio. Studies have shown that birds nesting near the edge suffer significantly higher rates of nest predation and brood parasitism (Gates and Gysel 1978, Johnson and Temple 1990, Rich et al. 1994).

However, southwestern willow flycatchers could use the action area, the riparian habitat along the river bank, as a stopover site during migration. Possible impacts to the flycatcher would include temporary displacement during construction activities and temporary loss of 3.3 acres of flycatcher habitat. After construction is completed, native riparian species would be replanted in areas along the river bank.

Reclamation and NPS propose the following minimization measures for the southwestern willow flycatcher:

1. Existing healthy riparian vegetation and mature trees present in the Sportsmen's Park area would be protected from construction disturbance.
2. Vegetation clearing and activities associated with the riparian habitat adjacent to the Colorado River would occur outside the southwestern willow flycatcher breeding season. The flycatcher's breeding season is May through August.
3. Surveys for the southwestern willow flycatcher would be conducted by a qualified biologist one to three days prior to the removal of riparian vegetation. If nesting flycatchers are detected in the action area, work activities would temporarily stop until the chicks have fledged.

In consideration of the above measures and anticipated potential effects, Reclamation and NPS determined that the proposed project *may affect, but is not likely to adversely affect* the southwestern willow flycatcher. The Service agrees with this determination.

## FORMAL CONSULTATION

### Consultation History

On May 8, 2006, Reclamation requested a list of threatened and endangered species that may occur within the action area for the subject project. On June 14, 2006, we provided the species list to Reclamation as requested (File No. 1-5-06-SP-524). We determined that the bald eagle (*Haliaeetus leucocephalus*), bonytail chub, desert tortoise (Mojave population), razorback sucker, relict leopard frog (*Rana onca*) (candidate species), southwestern willow flycatcher, western yellow-billed cuckoo (*Coccyzus americanus*) (candidate species), and the Yuma clapper rail (*Rallus longirostris yumanensis*) may be present in the action area.

On August 21, 2006, Reclamation requested our review of the Administrative Draft Biological Assessment, dated August 2006 for the proposed project. On September 8, 2006, we provided comments on the Administrative Draft Biological Assessment. For possible project impacts to the desert tortoise, Reclamation determined that the proposed project *may affect, but is not likely to adversely affect* the tortoise. Based on the proposed work activities occurring on desert tortoise habitat and the potential for injury to the tortoise, we recommended that Reclamation change their determination to "likely to adversely affect" for the desert tortoise and initiate formal consultation under section 7 of the Act on possible project impacts to the desert tortoise. We further recommended that Reclamation consider additional minimization measures for possible impacts to the bonytail chub and razorback sucker and initiate informal consultation for these two species. In addition, we asked Reclamation to further analyze possible project impacts to the bald eagle, southwestern willow flycatcher, western yellow-billed cuckoo, and Yuma clapper rail.

On October 10, 2006, the Service and Reclamation discussed the Service's comments on the Administrative Draft Biological Assessment and the above recommended determinations. Reclamation's response to the Service's recommendations is documented in the Administrative Draft Biological Assessment Laughlin Heritage Trail System Comment Response Tracking Form, dated October 4, 2006.

On November 8, 2006, Reclamation requested formal consultation on the potential effects of the proposed project on federally listed species. We received Reclamation's letter and draft Biological Assessment for the subject project on November 9, 2006, at which time we determined that the information provided was insufficient to initiate formal consultation effective on that date and we requested additional information.

On December 5, 2006, Reclamation provided the final Biological Assessment for the subject project. Reclamation determined that the proposed project is likely to adversely affect the desert tortoise and the proposed project may affect but is not likely to adversely affect the bonytail chub, razorback sucker, southwestern willow flycatcher, and western yellow-billed cuckoo. We determined that the information provided by Reclamation was sufficient to initiate formal consultation effective on December 5, 2006.

On January 11, 2007, the Service and Reclamation biologists conducted a site visit to confirm habitat characteristics in the action area. After the site visit, the Service and Reclamation staff met to discuss project details and the consultation process. This meeting is summarized in a January 12, 2007 e-mail, which was sent to Reclamation by the Service.

Based on the January 11, 2007, site visit it was determined by the Service and Reclamation that the project area lacked habitat that would support the western yellow-billed cuckoo. On January 27, 2007, the Service received Reclamation's request to remove the western yellow-billed cuckoo from informal consultation on the proposed project. As requested, the Service removed the cuckoo from the consultation.

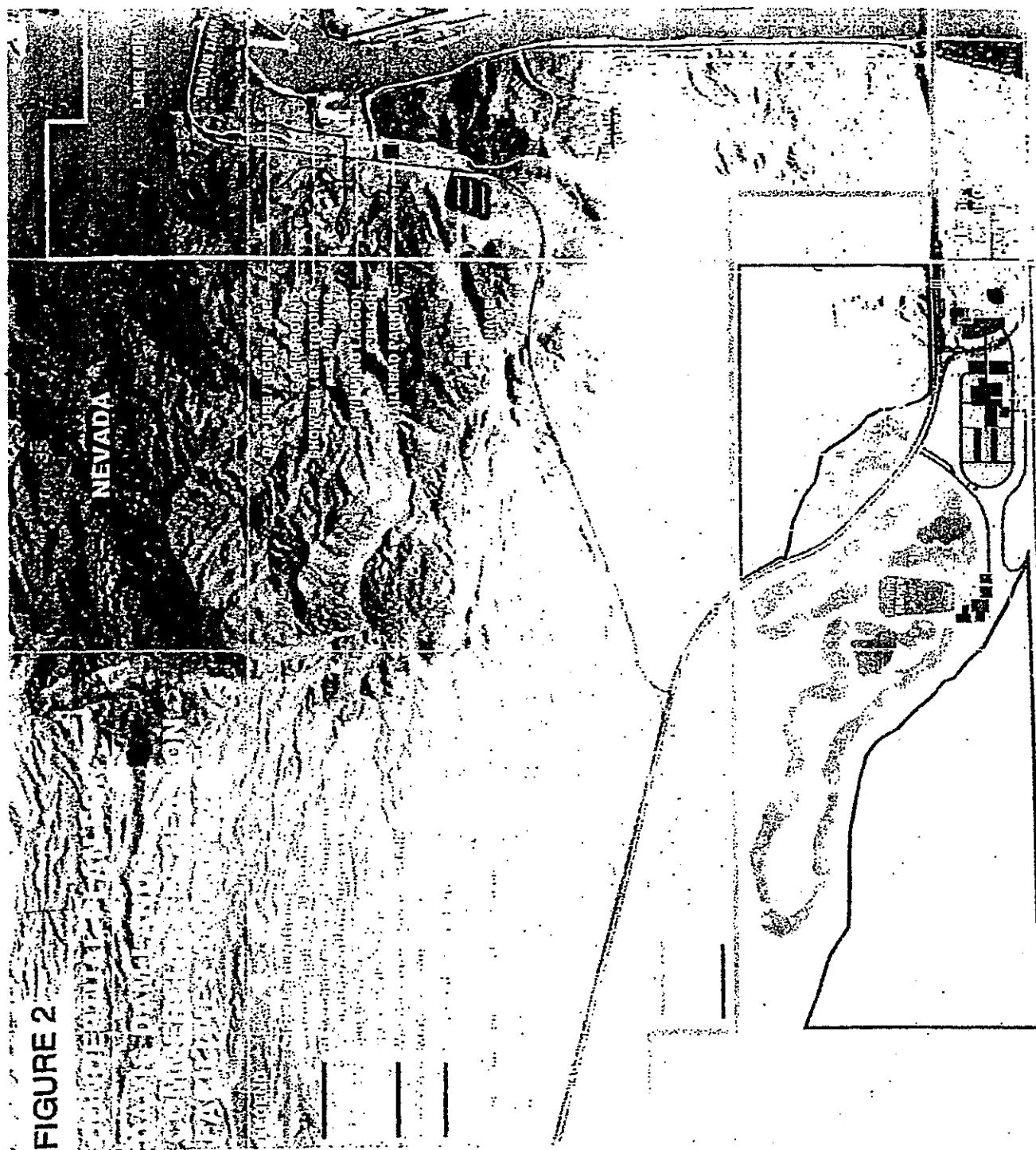
On March 5, 2007, the Service received a request from Reclamation to review and submit comments on the draft biological opinion for the subject project. The Service sent an electronic copy of a preliminary draft biological opinion by e-mail to Reclamation on March 30, 2007. On April 6, 2007, an electronic copy of the final draft of this biological opinion was sent by e-mail to Reclamation.

The Service received Reclamation's comments on the draft biological opinion on April 10, 2007. Pursuant to 50 CFR § 402.14, if the Federal agency submits comments to the Service regarding the draft biological opinion 10 days before the deadline of issuing the opinion, the Service is entitled to an automatic 10-day extension of the deadline. Therefore, because comments were received nine days before the deadline, the Service used the automatic extension to respond to Reclamation's comments. The Service's response to Reclamation's comments are documented in an e-mail dated April 12, 2007 with an attachment, and an e-mail from the Service sent to Reclamation on April 24, 2007.

## **BIOLOGICAL OPINION**

### **I. Description of the Proposed Action**

Reclamation proposes to develop the Laughlin Regional Heritage Greenway Trail System located between Davis Dam and Laughlin in Clark County, Nevada. The proposed project is located primarily on Reclamation land, and also includes BLM, NPS, Clark County, and State of Nevada lands. Reclamation is the lead Federal agency for compliance under section 7 of the Act. The proposed project would include trails, trailheads, the Day-Use Area and associated facilities, a park and golf course (Figure 2). In addition to constructing these facilities, the proposed project would remove a paved road, replant disturbed areas with native species, and provide resource protection measures that would eliminate off-highway vehicle (OHV) use on desert habitat. Reclamation estimates work activities would be completed in phases and be dependent on funding availability. A description of the proposed project is below. Further information on project activities can be found in the Biological Assessment for the subject project (Reclamation 2006).



## **North Reach Area**

The North Reach Area would include a system of pedestrian and equestrian trails, trailheads, a river walk, and a Day-Use Area. All proposed Day-Use facilities and associated amenities would be located on lands managed by Reclamation and NPS, with three exceptions: 1) a trailhead would be located on land managed by BLM; 2) an additional trailhead would be located on land managed by Clark County; and 3) portions of a multi-use trail would be located on lands managed by Clark County and the State of Nevada. The Day-Use Area and river walk are detailed on pages 2 and 4 of this document.

## **Trailheads**

Trailhead 1 would be located at the southwest corner of the State Route 163 and Casino Drive intersection on Clark County land. Trailhead 1 would replace an existing parking area. The trailhead would cover approximately 3.7 acres and would accommodate 50 parking spaces for recreational vehicles, buses, and general purpose vehicles on a paved surface. Unpaved portions of the trailhead would be replanted with native vegetation.

Trailhead 2 would be located approximately 1,000 ft north of Trailhead 1 in a previously disturbed area, and would serve as a departure point for the majority of trails proposed for the North Reach Area. Trailhead 2 would cover approximately 1 acre and would be designed to accommodate 26 visitor parking space and a volunteer host site. Unpaved surfaces in and around the trailhead would be revegetated with native plants.

Trailhead 3 would be an equestrian trailhead on Davis Dam Road, approximately 3.7 acres in size, in a previously disturbed area. The equestrian trailhead would accommodate up to 40 visitor parking spaces. Unpaved portions of the trailhead would be replanted with native vegetation.

Trailhead 4 would be located south of the intersection at Thomas Edison and Laughlin Civic Drive on Federal land administered by BLM. This trailhead would be approximately 1 acre in size, and would accommodate 50 visitor parking spaces. Amenities would include signage, benches, and a shade shelter. Portions of the trailhead would be replanted with native vegetation.

## **Multi-use Trails**

Multi-use trails would form the connection between Trailheads 1, 2, and 4. The trails would be a maximum of 25 ft in width and approximately 1.2 miles in length. Approximately 0.7 miles of the multi-use trails would be constructed on non-Federal land administered by Clark County and Nevada Department of Wildlife (NDOW). While the precise alignment of these trails would be determined during the site design phase, it would be designed to connect trailheads with a proposed pedestrian bridge over State Route 163 and an existing road over Davis Dam. The multi-use trails also would serve as the connection between the proposed trail system and the existing river walk along the Colorado River.

**Equestrian Trail**

The equestrian trail (approximately 2.3 miles) would be constructed between Trailhead 3 and the proposed Discovery Site and between Trailhead 3 and the proposed Day-Use Area. These trails would be a maximum of 25 ft wide, and would follow the alignment of an existing trail or road. The equestrian trails would join the river walk at the Day-Use Area and at the Discovery Site, forming a complete loop.

**Contractor's Camp Interpretive Loop**

A 0.5-mile interpretive walk would be located adjacent to the Discovery Site in the approximate location of the historic Davis Dam contractor's camp. The precise alignment of this trail would be determined after cultural investigation is completed. In general, it would be designed with several interpretive signs to lead visitors through the contractor's camp along existing paths or roadways.

**Regional Park**

The proposed action also includes the construction of a golf course, park trails and facilities, and setting aside two reserve areas in sections 10 and 11 (Figure 2).

**Golf Course**

An Audubon International Signature golf course is proposed for approximately 235 acres within the Regional Park. The golf course would be part of a cooperative effort among Reclamation and Audubon International under a program that promotes ecologically sound land management and the conservation of natural resources.

**Regional Park Trails**

An approximately 1.5-mile long pedestrian, bicycle, and equestrian trail would connect the Regional Park in sections 10 and 11 to the North Reach trail system described above. The trail would follow the alignment of an existing road, and would be a maximum of 25 ft wide. The precise trail alignment would be determined during site design, but generally the trail would extend north from the Regional Park, through a portion of Lake Mead National Recreation Area (NRA), and connect with the trail system in the North Reach Area. In addition, a multi-use trail loop around the golf course would be constructed with a maximum width of 25 feet.

**Regional Park Facilities**

A Clark County multi-generational community center and visitors' center would be located within section 10. The community facilities would include fencing, shade, directional and interpretive signage, utilities, parking, lighting, benches, and landscaping with native plants.

Fencing would be placed around sections 10 and 11 and include desert tortoise fencing where appropriate.

### **Utilities**

The river walk, pedestrian bridge over State Route 163 and connecting trails would serve as a utility corridor, with a 6-inch conduit for electrical power, a 4-inch conduit for fiber optics, a 2-inch conduit for telephone, and up to a 12-inch conduit for water lines. These would be underground conduits except where the bridge is attached.

### **Reserve Area**

Approximately 468 acres of Reclamation land in sections 10 and 11 would be reserved as a natural area. The reserve area would be fenced in appropriate locations to prohibit OHV access and allow vegetation and wildlife to recover from previous disturbance.

#### **a. Proposed Minimization Measures**

Reclamation, NPS, and BLM propose the following measures to minimize effects to the desert tortoise that may result from the proposed project:

1. A qualified desert tortoise biologist would be on site at all times during construction with exception of when there is work in the proposed Day -Use Area, river walk trail and any other areas that do not have desert tortoise habitat, for the duration of the project. The biologist would be responsible for ensuring that no tortoises, burrows, or nests would be impacted by construction activities and would oversee the implementation of additional conservation measures described below.
2. A desert tortoise education program would be presented to all personnel onsite during construction. This program would contain information concerning the biology and distribution of the desert tortoise, its legal status and potential occurrence near the proposed project area, the definition of "take" and associated penalties, measures designed to minimize the effects of construction activities, the means by which employees can facilitate this process, and reporting requirements to be implemented in the event that desert tortoises are encountered. Personnel would be instructed to check under vehicles before moving them as tortoises often seek shelter under parked vehicles.
3. All areas to be disturbed would have boundaries flagged before beginning the activity, and all disturbance would be confined to the flagged areas. All project personnel would be instructed that their activities must be confined to locations within flagged areas. Disturbance beyond the actual zone would be prohibited.

4. The project area, with the exception of the proposed Day-Use Area, river walk trail, and any other areas that do not have desert tortoise habitat, would be surveyed by an authorized biologist for desert tortoises and their burrows immediately prior (within 24 hours) to the onset of construction. The surveys would provide 100-percent coverage of the project construction area. All potential tortoise burrows would be identified and flagged for avoidance or excavation. All desert tortoise surveys, handling of desert tortoises, and burrow excavation will be performed only by an authorized biologist.

Special precautions would be taken to ensure that desert tortoises are not harmed as a result of their capture and movement during extreme temperatures (i.e., air temperatures below 55° F or above 95° F). Under such adverse conditions, tortoises captured would be monitored continually by an authorized biologist until the tortoise exhibits normal behavior. If a desert tortoise shows signs of heat stress, procedures would be implemented as identified in Service-approved protocols (Desert Tortoise Council Guidelines for Handling Desert Tortoises During Construction Projects 1994, revised 1999).

5. All burrows located within areas proposed for disturbance, whether occupied or vacant, would be excavated by a qualified biologist and collapsed or blocked to prevent desert tortoise re-entry. All burrows would be excavated with hand tools to allow removal of desert tortoises or desert tortoise eggs. All desert tortoise handling and excavations, including nests, would be conducted by a qualified desert tortoise biologist in accordance with Service-approved protocol (Desert Tortoise Council 1994, revised 1999).
6. All located desert tortoises and desert tortoise eggs would be relocated offsite into undisturbed habitat. Reclamation would work with the Service to identify an appropriate site north of Highway 163.
7. The onsite biologist would record each observed or handled desert tortoise. Information will include the following: Location, date and time of observation, whether the tortoise was handled, general health and whether it voided its bladder, location tortoise was moved from and location moved to, and unique physical characteristics of each tortoise.
8. Project activities that may endanger a tortoise would cease if a tortoise is found on a project site. Project activities would resume after the qualified biologist removes the tortoise from danger or after the tortoise has moved to a safe area.
9. Trash and food items would be disposed properly in predator-proof containers with resealing lids. During construction activities, trash containers will be emptied and waste would be removed from the project area daily. Trash removal reduces the attractiveness of the area to opportunistic predator such as desert kit



fox (*Vulpes macrotis*), coyotes (*Canis latrans*), and common ravens (*Corvus corax*).

10. A speed limit of 25 miles per hour would be maintained while on the construction site, access roads, and storage areas. This effort would reduce dust and allow a safe speed at which personnel can observe desert tortoises in the road.
11. Any pipe, culverts or similar structures with a diameter greater than 3 inches that are stored on the construction site (within desert tortoise habitat) for one or more nights, would be inspected for tortoises before the material is moved, buried or capped. As an alternative, all such structures may be capped before being stored on the construction site.
12. Where feasible, disturbance would be avoided by moving the trail footprint around sensitive areas. If disturbance is unavoidable, Reclamation, NPS, and BLM would, if possible, either minimize the area of disturbance or replace affected vegetation in-kind onsite.
13. All construction, operation and maintenance activities would be conducted in a manner that minimizes disturbance to vegetation and drainage channels.
14. Cross-country travel and travel outside construction zones would be prohibited.
15. The proposed project would be developed in phases or project elements as funding becomes available for the different approved elements over a number of years. Therefore, Reclamation proposes that payment of the remuneration fees for compensation of desert tortoise habitat loss by the project proponent would occur on a per project element basis. The project proponent, Clark County, would prepare the project element design with Reclamation input, and ultimately submit a preliminary design report to Reclamation for formal review and approval. Reclamation would then review the project element and determine the number of habitat acres impacted by the project element. Reclamation would require a receipt of payment from Clark County, which would be kept on file, for each project element prior to any construction activities. It is anticipated that a total of 235 acres of desert tortoise habitat would be disturbed as a result of the proposed project.

Payment of fees would be deposited into the Desert Tortoise Public Lands Conservation Fund (account number 730-9999-2315) (section 7 account). Currently, the fee is assessed at the rate of \$723 per acre. Each year these fees will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U). Information on the CPI-U can be found on the internet at: <http://stats.bls.gov/news.release/cpi.nr0.htm>.

## **II. Status of the Species - Rangewide**

### **Desert Tortoise (Mojave Population)**

#### **Listing History**

On August 4, 1989, the Service published an emergency rule listing the Mojave population of the desert tortoise as endangered (54 FR 42270). On April 2, 1990, the Service determined the Mojave population of the desert tortoise to be threatened (55 FR 12178) on the basis of: significant population declines; loss of habitat from construction projects such as roads, housing and energy developments, and conversion of native habitat to agriculture; habitat degradation by grazing and OHV activities; illegal collection of desert tortoises by humans for pets or consumption; upper respiratory tract disease (URTD); predation on juvenile desert tortoises by common ravens and kit foxes; fire; and collisions with vehicles on paved and unpaved roads. Critical habitat in Arizona, California, Nevada, and Utah was designated on February 8, 1994, with an effective date of March 10, 1994.

#### *Overview of General Biology*

The desert tortoise is a large, herbivorous reptile located in portions of California, Arizona, Nevada, and Utah. It also occurs in Sonora and Sinaloa, Mexico. The Mojave population of the desert tortoise includes those animals living north and west of the Colorado River in the Mojave Desert of California, Nevada, Arizona, and southwestern Utah, and in the Sonoran Desert in California.

Desert tortoises reach 8 to 15 inches in carapace length and 4 to 6 inches in shell height. Hatchlings emerge from the eggs at about 2 inches in length. Adults have a domed carapace and relatively flat, unhinged plastron. Their shells are high-domed, and greenish-tan to dark brown in color with tan scute centers. Desert tortoises weigh 8 to 15 pounds when fully grown. The forelimbs have heavy, claw-like scales and are flattened for digging. Hind limbs are more stumpy and elephantine.

Optimal habitat for the desert tortoise has been characterized as creosote bush scrub in which precipitation ranges from 2 to 8 inches, where a diversity of perennial plants is relatively high, and production of ephemerals is high (Luckenbach 1982, Turner 1982, Turner and Brown 1982). Soils must be friable enough for digging of burrows, but firm enough so that burrows do not collapse. Desert tortoises occur from below sea level to an elevation of 7,300 feet, but the most favorable habitat occurs at elevations of approximately 1,000 to 3,000 feet (Luckenbach 1982).

Desert tortoises are most commonly located within the desert scrub vegetation type, primarily in creosote bush scrub. In addition, they occur in succulent scrub, cheesebush scrub, blackbrush scrub, hopsage scrub, shadscale scrub, microphyll woodland, Mojave saltbush-allscale scrub, and scrub-steppe vegetation types of the desert and semidesert grassland complex (Service 1994). Within these vegetation types, desert tortoises potentially can survive and reproduce where their

basic habitat requirements are met. These requirements include: a sufficient amount and quality of forage species; shelter sites for protection from predators and environmental extremes; suitable substrates for burrowing, nesting, and overwintering; various plants for shelter; and adequate area for movement, dispersal, and gene flow. Throughout most of the Mojave Region, tortoises occur most commonly on gently sloping terrain with sandy-gravel soils and with scattered shrubs, and where there is abundant inter-shrub space for growth of herbaceous plants. Throughout their range, however, tortoises can be located in steeper, rockier areas.

Desert tortoises are most active during the spring and early summer when annual plants are most common. Additional activity occurs during warmer fall months and occasionally after summer rainstorms. Desert tortoises spend the remainder of the year in burrows, escaping the extreme conditions of the desert. In Nevada and Arizona, tortoises are considered to be most active from approximately March 1 through October 31.

The size of desert tortoise home ranges varies with respect to location and year. Females have long-term home ranges that are approximately half that of the average male, which range from 25 to 200 acres (Berry 1986). Over its lifetime, each desert tortoise may require more than 1.5 square miles of habitat and make forays of more than 7 miles at a time (Berry 1986). In drought years, the ability of tortoises to drink while surface water is available following rains may be crucial for tortoise survival. During droughts, tortoises forage over larger areas, increasing the likelihood of encounters with sources of injury or mortality including humans and other predators.

Further information on the range, biology, and ecology of the desert tortoise is available in Berry and Burge (1984), Burge (1978), Burge and Bradley (1976), Bury et al. (1994), Germano et al. (1994), Hovik and Hardenbrook (1989), Karl (1981, 1983a, 1983b), Luckenbach (1982), Service (1994), and Weinstein et al. (1987).

#### *Survival and Recovery Needs*

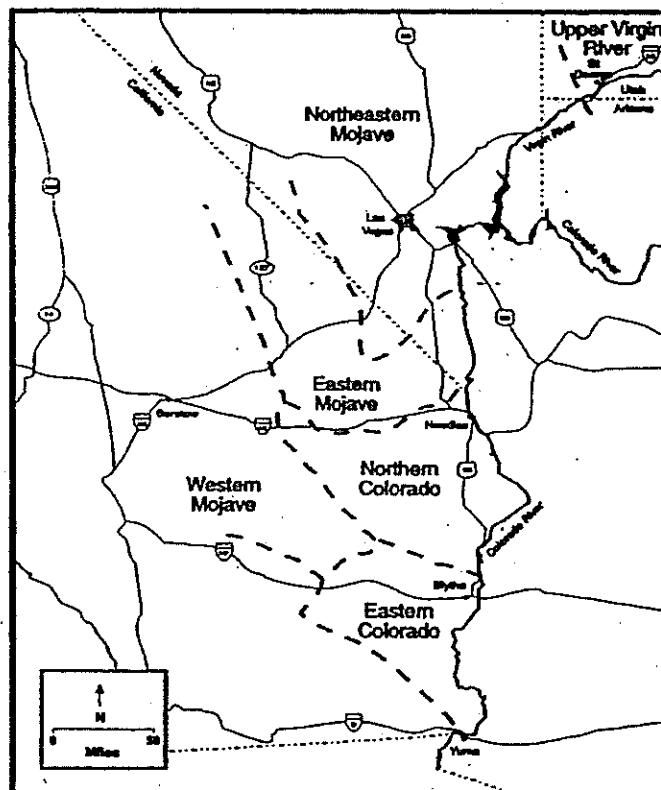
On June 28, 1994, the Service approved the Desert Tortoise Recovery Plan (Service 1994) (Recovery Plan). The Recovery Plan divides the range of the desert tortoise into 6 recovery units and recommends establishment of 14 desert wildlife management areas (DWMAs) throughout the recovery units. Within each DWMA, the Recovery Plan recommends implementation of reserve-level protection of desert tortoise populations and habitat, while maintaining and protecting other sensitive species and ecosystem functions.

As part of the actions needed to accomplish recovery, the Recovery Plan recommends that land management within all DWMAs should restrict human activities that negatively impact desert tortoises (Service 1994). The DWMAs are being designated by BLM through development or modification of their land-use plans in Arizona, Nevada, Utah, and parts of California.

Although recovery of the tortoise will focus on DWMAs, section II.A.6. of the Recovery Plan and section 2(b) of the Act provide for protection and conservation of ecosystems on which

federally-listed threatened and endangered species depend, which includes both recovery and non-recovery areas. The Mojave Desert ecosystem, of which the desert tortoise and its habitat are an integral part, consists of a dynamic complex of plant, animal, fungal, and microorganism communities and their associated nonliving environment interacting as an ecological unit (Noss and Cooperrider 1994). Actions that adversely affect components of the Mojave Desert ecosystem may directly or indirectly affect the desert tortoise. The Recovery Plan further states that desert tortoises and habitat outside recovery areas may be important to the recovery of the tortoise. Healthy, isolated tortoise populations outside recovery areas may have a better chance of surviving catastrophic effects such as disease, than large, contiguous populations (Service 1994). A description of each Recovery Unit follows and is depicted in Figure 3.

Figure 3. Desert Tortoise Recovery Units (Service 1994)



The Northeastern Mojave Recovery Unit occurs primarily in Nevada, but it also extends into California along the Ivanpah Valley and into extreme southwestern Utah and northwestern Arizona. Vegetation within this unit is characterized by creosote bush scrub, big galleta-scrub steppe, desert needlegrass scrub-steppe, and blackbrush scrub (in higher elevations). Topography is varied, with flats, valleys, alluvial fans, washes, and rocky slopes. Much of the northern portion of the Northeastern Mojave Recovery Unit is characterized as basin and range, with elevations from 2,500 to 12,000 feet. Desert tortoises typically eat summer and winter annuals, cacti, and perennial grasses. Desert tortoises in this Recovery Unit, the northern portion of which

represents the northernmost distribution of the species, are typically observed in low densities (about 10 to 20 adults per square mile).

A kernel analysis was conducted in 2003-2004 for the desert tortoise (Tracy et al. 2004) as part of the reassessment of the 1994 Recovery Plan. Kernel analyses are quantitative analyses in which the distributions of live tortoises and carcasses do not overlap. These non-overlapping areas may indicate areas that have experienced recent die offs or expansions of populations. The kernel analysis revealed several areas in which the kernel estimations for live tortoises and carcasses did not overlap. These regions lacking overlap of live tortoises and carcasses (i.e., carcasses are located but no live tortoises) represent areas where there were likely recent die-offs or declines in tortoise populations. The pattern of non-overlapping kernels of greatest concern is that in which there were large areas where the kernels encompassed carcasses but not live animals. The kernel analysis indicated large areas in the Piute-Eldorado Valley where there were carcasses but no live tortoises. For this entire area in 2001, there were 103 miles of transects walked, and a total of 6 live and 15 dead tortoises were located, resulting in a live encounter rate of 0.06 tortoises per mile of transect for this area. This encounter rate was among the lowest that year for any of the areas sampled in the range of the desert tortoise (Mojave population) (Tracy et al. 2004).

Kernel analysis for the Coyote Springs DWMA showed areas where the distributions of carcasses and living tortoises do not overlap; however, densities of adult tortoises for the region do not show a statistical trend over time. Thus, while there may be a local die-off occurring in the northern portion of this DWMA, this does not appear to influence the overall trend in the region as interpreted by study plot data. Because permanent study plots for this region were discontinued after 1996, if there have been recent declines in numbers they are not reflected in the kernel analysis. Nevertheless, large regions of non-overlapping carcass and live tortoise kernels in the regions were not identified adjacent to the Coyote Springs DWMA. The probability of finding either a live tortoise or a carcass was relatively very low for Beaver Dam Slope and Gold-Butte Pakoon and moderately low for Mormon Mesa/Coyote Springs.

The Eastern Mojave Recovery Unit is situated primarily in California, but also extends into Nevada in the Amargosa, Pahrump, and Piute valleys. In the Eastern Mojave Recovery Unit, desert tortoises are often active in late summer and early autumn in addition to spring because this region receives both winter and summer rains and supports two distinct annual floras on which they can feed. Desert tortoises in the Eastern Mojave Recovery Unit occupy a variety of vegetation types and feed on summer and winter annuals, cacti, perennial grasses, and herbaceous perennials. They den singly in caliche caves, bajadas, and washes. This Recovery Unit is isolated from the Western Mojave Recovery Unit by the Baker Sink, a low-elevation, extremely hot and arid strip that extends from Death Valley to Bristol Dry Lake. The Baker Sink area is generally not considered suitable for desert tortoises. Desert tortoise densities in the Eastern Mojave Recovery Unit can vary dramatically, ranging from 5 to as much as 350 adults per square mile (Service 1994).

Ivanpah and Piute-Eldorado valleys contained study plots that were analyzed in the East Mojave Recovery Unit analysis. While there was no overall statistical trend in adult density over time, the 2000 survey at Goffs and the 2002 survey at Shadow Valley indicate low densities of adult tortoises relative to earlier years. Unfortunately, there are no data in the latter years for all five study plots within this Recovery Unit; and therefore, while there is no statistical trend in adult densities, we cannot conclude that tortoises have not experienced recent declines in this area. The probability of finding a carcass on a distance sampling transect was considerably higher for Ivanpah, Chemehuevi, Fenner, and Piute-Eldorado, which make up the Eastern Mojave Recovery Unit.

The Northern Colorado Recovery Unit is located completely in California. Here desert tortoises are located in the valleys, on bajadas and desert pavements, and to a lesser extent in the broad, well-developed washes. They feed on both summer and winter annuals and den singly in burrows under shrubs, in intershrub spaces, and rarely in washes. The climate is somewhat warmer than in other recovery units, with only 2 to 12 freezing days per year. Tortoises that occupy this unit have the California mitochondrial DNA (mtDNA) haplotype and phenotype. Allozyme frequencies differ significantly between this Recovery Unit and the Western Mojave, indicating some degree of reproductive isolation between the two.

Desert tortoises in the Eastern Colorado Recovery Unit, also located completely in California, occupy well-developed washes, desert pavements, piedmonts, and rocky slopes characterized by relatively species-rich succulent scrub, creosote bush scrub, and blue palo verde-ironwood-smoke tree communities. Winter burrows are generally shorter in length, and activity periods are longer than elsewhere due to mild winters and substantial summer precipitation. Tortoises within this unit feed on summer and winter annuals and some cacti; they den singly. They also have the California mtDNA haplotype and shell type.

The Upper Virgin River Recovery Unit encompasses all desert tortoise habitat in Washington County, Utah, except the Beaver Dam Slope, Utah population. The desert tortoise population in the area of St. George, Utah is at the extreme northeastern edge of the species' range and experiences long, cold winters (about 100 freezing days) and mild summers, during which the tortoises are continually active. In this area the animals live in a complex topography consisting of canyons, mesas, sand dunes, and sandstone outcrops where the vegetation is a transitional mixture of sagebrush scrub, creosote bush scrub, blackbush scrub, and a psammophytic community. Desert tortoises use sandstone and lava caves instead of burrows, travel to sand dunes for egg-laying, and use still other habitats for foraging. Two or more desert tortoises often use the same burrow. Shell morphology and mtDNA have not been studied in this Recovery Unit, but allozyme variation is similar to that found in the Northeastern Mojave Recovery Unit.

The Western Mojave Recovery Unit occurs completely in California and is exceptionally heterogeneous and large. It is composed of the Western Mojave, Southern Mojave, and Central Mojave regions, each of which has distinct climatic and vegetational characteristics. The most pronounced difference between the Western Mojave and other recovery units is in timing of rainfall and the resulting vegetation. Most rainfall occurs in fall and winter and produces winter

annuals, which are the primary food source of tortoises. Above-ground activity occurs primarily in the spring, associated with winter annual production. Thus, tortoises are adapted to a regime of winter rains and rare summer storms. In this area desert tortoises occur primarily in valleys, on alluvial fans, bajadas, and rolling hills in saltbush, creosote bush, and scrub steppe communities. Tortoises dig deep burrows (usually located under shrubs on bajadas) for winter hibernation and summer aestivation. Desert tortoises within this unit generally den singly. They have a California mtDNA haplotype and a California shell type.

#### *Desert Tortoise Recovery Plan Assessment and Recommendations*

The U.S. General Accounting Office (GAO) Report, *Endangered Species: Research Strategy and Long-Term Monitoring Needed for the Mojave Desert Tortoise Recovery Program* (GAO 2002) directed the Service to periodically reassess the Recovery Plan to determine whether scientific information developed since its publication could alter implementation actions or allay some of the uncertainties about its recommendations. In response to the GAO report, the Service initiated a review of the existing Recovery Plan in 2003.

In March 2003, the Service impaneled the Desert Tortoise Recovery Plan Assessment Committee to assess the Recovery Plan. The Committee was selected to represent several important characteristics with particular emphasis on commitment to solid science. The charge to the Committee was to review the entire Recovery Plan in relation to contemporary knowledge to determine which parts of the recovery plan will need updating. The recommendations of the Committee were presented to the Service and Desert Tortoise Management Oversight Group approximately a year later, on March 24, 2004. The recommendations will be used as a guide by a recovery team of scientists and stakeholders to modify the 1994 Recovery Plan. A revised recovery plan is anticipated in 2007.

#### *Desert Tortoise Distribution*

The prescriptions for recovery in the Recovery Plan were for individual populations and assumed that preserving large blocks of habitat and managing threats in that habitat would be principally all that would be necessary to recover the species. However, that original paradigm, and the prescriptions made within that paradigm, may be wrong. Existing data have revealed population crashes that have occurred asynchronously across the range. There are reports that some populations, which have crashed previously, have subsequently increased in population density. Additionally, all known dense populations of desert tortoises have crashed. This suggests that density-dependent mortality occurs in desert tortoise populations, and that population dynamics may be asynchronous.

These characteristics indicate that tortoises may exist in a classic metapopulation structure (Hanski 1999, Levins and Culver 1971, Levin et al. 1984), and this should portend profoundly different prescriptions for recovery. In particular, if desert tortoises have historically existed in metapopulations, then connections among habitat patches are a necessary part of conservation prescriptions. Additionally, habitat suitable for tortoises, but without tortoises, should be

regarded as equally necessary for recovery. Long-term persistence cannot be determined from tortoise density or tortoise numbers alone, but assessment must include the complexities of metapopulation dynamics and the habitat characteristics that promote metapopulation dynamics including habitat connectivity through inefficient corridors (i.e., partial connectivity), asynchrony of subpopulation dynamics, and several separate habitat patches. Some of the characteristics of proper metapopulation function may already have been obviated by proliferation of highways and habitat fragmentation due to urbanization. Thus, management may require artificially facilitating metapopulation processes such as movement among patches.

The genetic distinctness of tortoise populations and their pathogens should be assessed to guide all manipulative management actions (e.g., head-starting, translocation, habitat restoration, and corridor management). The Desert Tortoise Recovery Plan Assessment Committee proposed a revision to the previous delineation of recovery units based on new scientific information. The recommended delineations reflect the prevailing concepts of subpopulation "discreteness," and "significance," and incorporate morphological, behavioral, genetic, and environmental information. The Committee's recommendation reduces the number of recovery units from six to five by leaving the original Upper Virgin River and Western Mojave units intact and recombining the four central units into three reconfigured units: (1) Lower Virgin River Desert; (2) Northeastern Mojave Desert (including Amargosa Valley, Ivanpah Valley, and Shadow Valley); and (3) Eastern Mojave and Colorado Desert. These recommended recovery units are based largely on the best biochemical/genetic data presented in Rainboth et al. (1989), Lamb et al. (1989), Lamb and Lydehard (1994), and Britten et al. (1997). Because these delineations are general and not definitive at this time, more data and analyses are needed that may result in additional modification of Recovery Unit delineations.

The 1994 Recovery Plan conceived desert tortoises to be distributed in large populations that required large areas and large densities to recover. However, existing data are consistent with the possibility that tortoises have evolved to exist in metapopulations. Metapopulation theory conceives that tortoises are distributed in metapopulation patches connected with corridors that allow inefficient and asynchronous movements of individuals among the patches. This paradigm conceives that some habitat patches within the range of the desert tortoise will have low population numbers or no tortoises at all, and others will have higher population numbers. Movement among the patches is necessary for persistence of the "system." If desert tortoises evolved to exist in metapopulations, then long-term persistence requires addressing habitat fragmentation caused by highways and "satellite" urbanization. Satellite urbanization occurs when blocks of habitat become developed which are substantially disjunct from existing developments (leap-frog development) resulting in a greater edge effect and creating an area of habitat between the developments which becomes degraded over time. Ensuring the integrity and function of natural corridors among habitat patches might require active management of tortoise densities in habitat patches and associated corridors.

Land managers and field scientists identified 116 species of alien plants in the Mojave and Colorado deserts (Brooks and Esque 2002). The proliferation of non-native plant species has also contributed to an increase in fire frequency in tortoise habitat by providing sufficient fuel to



carry fires, especially in the intershrub spaces that are mostly devoid of native vegetation (Service 1994; Brooks 1998; Brown and Minnich 1986). Changes in plant communities caused by alien plants and recurrent fire may negatively affect the desert tortoise by altering habitat structure and species composition of their food plants (Brooks and Esque 2002).

Disease was identified in the 1994 Recovery Plan as an important threat to the desert tortoise. Disease is a natural phenomenon in wild populations of animals and can contribute to population declines by increasing mortality and reducing reproduction. However, URTD appears to be a complex, multi-factorial disease interacting with other stressors to affect desert tortoises (Brown et al. 1994; Tracy et al. 2004). The disease occurs mostly in relatively dense desert tortoise populations, as mycoplasmal infections are dependent upon higher densities of the host (Tracy et al. 2004).

#### *Desert Tortoise Reproduction*

Desert tortoises possess a combination of life history and reproductive characteristics that affect the ability of populations to survive external threats. Tortoises grow slowly, require 15 to 20 years to reach sexual maturity, and have low reproductive rates during a long period of reproductive potential (Turner et al. 1984, Bury 1987, Tracy et al. 2004). At Yucca Mountain, Nye County Nevada (Northeastern Mojave Recovery Unit), Mueller et al. (1998) estimated that the mean age of first reproduction was 19 to 20 years; and reported that clutch size (1 to 10 eggs) and annual fecundity (0 to 16 eggs) were related to female size but annual clutch frequency (0 to 2) was not. Further, Mueller et al. (1998) suggested that body condition during July to October may determine the number of eggs a tortoise can produce the following spring.

McLuckie and Fridell (2002) determined that the Beaver Dam Slope desert tortoise population, within the Northeastern Mojave Recovery Unit, had a lower clutch frequency ( $1.33 \pm 0.14$ ) per reproductive female and fewer reproductive females (14 out of 21) when compared with other Mojave desert tortoise populations. In the 1990s, dramatic tortoise population declines occurred at Beaver Dam Slope due primarily to disease and habitat degradation and alteration (Service 1994). The number of eggs that a female desert tortoise can produce in a season is dependent on a variety of factors including environment, habitat, availability of forage and drinking water, and physiological condition (Henen 1997, McLuckie and Fridell 2002).

#### *Desert Tortoise Numbers*

Data collected on 1 square-mile permanent study plots indicate that tortoise populations have declined both in numbers of tortoises located during surveys and in densities of live tortoises at most sites since the plots were first established 20-30 years ago (Berry et al. 2002). Declines of 50 to 96 percent have occurred regardless of initial tortoise densities.

Increases in the occurrence of shell-skeletal remains have been found to correspond with declines in numbers and densities of live tortoises with the exception of certain plots where poaching has been documented (Berry 2003). Results of desert tortoise surveys at three survey plots (Beaver

Dam Slope, Littlefield, and Virgin Slope) in Arizona indicate that all three sites have experienced significant die-offs.

Six live tortoises were located in a 2001 survey of the Beaver Dam Slope Exclosure Plot (Walker and Woodman 2002). Three had definitive signs of URTD, and two of those also had lesions indicative of cutaneous dyskeratosis. Previous surveys of this plot detected 31 live tortoises in 1996, 20 live tortoises in 1989, and 19 live tortoises in 1980. The 2001 survey report indicated that it is likely that there is no longer a reproductively viable population of tortoises on this study plot.

Thirty-seven live tortoises were located in a 2002 survey of the Littlefield Plot (Young et al. 2002). None had definitive signs of URTD. Twenty-three tortoises had lesions indicative of cutaneous dyskeratosis. Previous surveys of this plot detected 80 live tortoises in 1998 and 46 live tortoises in 1993. The survey report indicated that the site might be in the middle of a die-off due to the high number of carcasses observed since the site was last surveyed in 1998.

Nine live tortoises were located during the marking phase of a 2003 survey of the Virgin Slope Plot (Goodlett and Woodman 2003). The surveyors determined that the confidence intervals of the population estimate would be excessively wide and not lead to an accurate population estimate, so the recapture phase was not conducted. One tortoise had definitive signs of URTD. Seven tortoises had lesions indicative of cutaneous dyskeratosis. Previous surveys of this plot detected 41 live tortoises in 1997 and 15 live tortoises in 1992. The survey report indicated that the site may be at the end of a die-off that began around 1996-1997.

The Western Mojave has experienced marked population declines as indicated in the Recovery Plan and this decline continues today. Spatial analyses of the West Mojave show areas with increased probabilities of encountering dead rather than live animals, areas where kernel estimates for carcasses exist in the absence of live animals, and extensive regions where there are clusters of carcasses where there are no clusters of live animals. Collectively, these analyses point generally toward the same areas within the West Mojave, namely the northern portion of the Fremont-Kramer DWMA and the northwestern part of the Superior-Cronese DWMA. Together, these independent analyses, based on different combinations of data, all suggest the same conclusion for the Western Mojave. Data are not currently available with sufficient detail for most of the range of the desert tortoise with the exception of the Western Mojave (Tracy et al. 2004).

Declines in tortoise abundance appear to correspond with increased incidence of disease in tortoise populations. The Goffs permanent study plot in Ivanpah Valley, California, suffered 92 to 96 percent decreases in tortoise density between 1994 and 2000 (Berry 2003). The high prevalence of disease in Goffs tortoises likely contributed to this decline (Christopher et al. 2003). Upper respiratory tract disease has not yet been detected at permanent study plots in the Sonoran Desert of California, but is prevalent at study plots across the rest of the species' range (Berry 2003) and has been shown to be a contributing factor in population declines in the western Mojave Desert (Brown et al. 1999, Christopher et al. 2003).

High mortality rates at permanent study plots in the northeastern and eastern Mojave and Sonoran Deserts appear to be associated with incidence of shell diseases in tortoises (Jacobson et al. 1994). Low levels of shell diseases were detected in many populations when the plots were first established, but increased during the 1980s and 1990s (Jacobson et al. 1994, Christopher et al. 2003). A herpes virus has been discovered in desert tortoises, but little is known about its effects on tortoise populations at this time (Berry et al. 2002, Origgi et al. 2002).

The kernel analysis of the Eastern Colorado Recovery Unit shows that the distributions of the living tortoises and carcasses overlap for most of the region. The Chuckwalla Bench study plot occurs outside the study area, which creates a problem in evaluating what may be occurring in that area of the Recovery Unit. However, the few transects walked in that portion of the DWMA yielded no observations of live or dead tortoises. This illustrates a concern for drawing conclusions at a regional scale based on data from areas represented by too few study plots. The percentage of transects with live animals was relatively high for most DWMAs within the Eastern Colorado Recovery Unit. In addition, the ratio of carcasses to live animals was low within this Recovery Unit relative to others.

Long-term monitoring of desert tortoise populations is a high priority recovery task as identified in the Recovery Plan. From 1995 to 1998, pilot field studies and workshops were conducted to develop a monitoring program for the desert tortoise. In 1998, the Desert Tortoise Management Oversight Group identified line distance sampling as the appropriate method to determine rangewide desert tortoise population densities and trends. Monitoring of populations using this method is underway across the range of the desert tortoise. Successful rangewide monitoring will enable managers to evaluate the overall effectiveness of recovery actions and population responses to these actions, thus guiding recovery of the desert tortoise (Mojave population).

#### *Rangewide Population Monitoring Results: 2001-2005*

Rangewide tortoise population monitoring began in 2001 and is conducted annually (Table 1). Rangewide sampling of desert tortoises consisted of 4,986 transects totaling 15,957 miles which is the most comprehensive attempt undertaken to date to establish the density of this species (Service 2006). The rangewide monitoring program is designed to detect long-term population trends. However, density estimates from any brief window of time (e.g., 2001-2005) would be expected to detect only catastrophic declines or remarkable population increases. Therefore, following the first five years of the long-term monitoring project, the goal is not to document trends within this time period, but to gather information on baseline densities, and year-to-year and recovery unit-to-recovery unit variability. This information will also reflect transect-to-transect variability in observations as well as regional variability in detection functions. Rangewide sampling was initiated during a severe drought that intensified in 2002 and 2003, particularly in the western Mojave Desert in California. At the time the Recovery Plan was written, there was less consideration of the potentially important role of drought in the desert ecosystem, particularly regarding desert tortoises. In the meantime, studies have documented vulnerability of juvenile (Wilson et al. 2001) and adult tortoises (Peterson 1994, Peterson 1996, Henen 1997, Longshore et al. 2003) to drought.

**Table 1.** Summary of Desert Tortoise Densities by Recovery Unit.

	Year	# of Transects	Length (mi)	# of Adult Tortoises Located	Density (mi <sup>2</sup> )	95 Percent Confidence Interval Low	95 Percent Confidence Interval High
<b>Recovery Units (5)</b>	2001	1,631	1,653	279	9.40	8.02	11.0
	2002	1,010	2,490	289	8.95	7.35	10.9
	2003	990	2,407	354	8.19	6.77	9.90
	2004	610	4,086	445	8.05	6.97	9.29
	2005	745	5,321	489	8.76	7.66	10.0
<b>Upper Virgin River<sup>1</sup></b>	2001	159	195	168	48.6	37.0	63.7
	2002	—	—	—	—	—	—
	2003	157	192	96	27.2	21.1	35.0
	2004	—	—	—	—	—	—
	2005	155	189	136	35.1	26.4	46.7

<sup>1</sup> Data from McLuckie et al. (2006)

Considerable decreases in density were reported in 2003 in the Eastern Colorado and Western Mojave recovery units, with no correspondingly large rebound in subsequent estimates. Desert tortoise densities reported in these recovery units were approximately 8 to 9 tortoises per square mile.

Changing ecological conditions as a result of natural events or human-caused activities may stress individual tortoises and result in a more severe clinical expression of URTD (Brown et al. 2002). For example, the proliferation of non-native plants within the range of the tortoise has had far-reaching impacts on tortoise populations. Tortoises have been documented to prefer native vegetation over non-natives (Tracy et al. 2004). Non-native annual plants in desert tortoise critical habitat in the western Mojave Desert were identified to compose over 60 percent of the annual biomass (Brooks 1998). The reduction in quantity and quality of forage may stress tortoises and make them more susceptible to drought- and disease-related mortality (Brown et al. 1994). Malnutrition has been associated with several disease outbreaks in both humans and turtles (Borysenko and Lewis 1979). What is currently known with certainty about disease in the desert tortoise relates entirely to individual tortoises and not populations; virtually nothing is known about the demographic consequences of disease (Tracy et al. 2004).

### *Wildfires*

Numerous wildfires occurred in desert tortoise habitat across the range of the desert tortoise in 2005 due to abundant fuel from the proliferation of non-native plant species after a very wet winter. These wildfires heavily impacted two of the six desert tortoise recovery units, burning less than 19 percent of desert tortoise habitat in the Upper Virgin River and 10 percent in the Northeastern Mojave Recovery Unit (Table 2). In the Upper Virgin River Recovery Unit, 19 percent of the Upper Virgin River critical habitat unit (CHU) burned. In the Northeastern

Mojave Recovery Unit, three CHUs were impacted: about 23 percent of the Beaver Dam Slope CHU burned, 13 percent of the Gold Butte-Pakoon CHU, and 4 percent of the Mormon Mesa CHU. Although it is known that tortoises were burned and killed by the wildfires, tortoise mortality estimates are not available. In 2006, less than 50,000 acres of desert tortoise habitat burned which includes less than 20,000 acres of desert tortoise critical habitat.

To date, the status and trends of desert tortoise populations are difficult to determine based only upon an assessment of tortoise density due largely to the tortoise's overall low abundance and its subterranean sheltering behavior, as well as the cryptic nature of this species.

**Table 2. Approximate Acres of Desert Tortoise Habitat Burned in Each Recovery Unit during 2005.**

Recovery Unit	Habitat Burned (acres)	Percent Habitat Burned	CH* Burned (acres)	Percent CH Burned
Upper Virgin River**	10,446	< 19	10,446	19
Northeastern Mojave***	500,000	10	124,782	11
Eastern Mojave	6,000	< 1	1,219	<1
Western Mojave	0	0	0	0
Northern Colorado	0	0	0	0
Eastern Colorado	0	0	0	0
Total	516,446	-	136,447	-

\* CH – critical habitat

\*\* Estimates only for Upper Virgin River; GIS analysis needed

\*\*\* Potential habitat was mapped and calculated as Mojave Desert less than 4,200 feet in elevation minus playas, open water, and developed and agricultural lands.

### III. Environmental Baseline

#### Status of the Species in the Action Area

On March 31, 2002 to April 4, 2002, a survey for the desert tortoise was conducted within the proposed project area (Reclamation 2002). The area surveyed consisted of 100-percent coverage in sections 1, 10, and 11, which also included zone-of-influence surveys conducted up to 300 ft from the project area boundary. In 2006, additional desert tortoise surveys were conducted on transects spaced 30 ft apart in sections 1 and 12 along the proposed river walk and equestrian trail alignments (Reclamation 2006). Desert tortoise signs observed included live tortoises, burrows, scat, and shell remains. It is estimated that section 10 supports less than 40 desert tortoise per square mile. No desert tortoises or tortoise sign were observed in sections 1, 11 and 12.

Sections 10 and 11 consists of desert tortoise habitat, which includes Mojave mixed scrub and creosote bush (*Larrea tridentata*) communities with a minor catclaw (*Acacia greggii*) community interspersed within the two larger communities. The Mojave mixed scrub community consists primarily of creosote bush with other species such as bursage (*Ambrosia dumosa*), indigo bush (*Psoralea fremontii*), brittlebush (*Encelia farinosa*) and burro bush (*Hymenoclea salsola*). Four active dens, six inactive dens, and shell remains were found in section 10. The locations of active and inactive desert tortoise dens and shell remains corresponded to the presence of caliche in section 10. Caliche formations were found along eroded gullies and hills in the southern and eastern portions of section 10. Section 11 consisted of dissected gullies and ridges as well as broad expanses of relatively flat terrain which comprised of loose, friable soils with gravel, sand, and cobble. Section 11 is bisected by State Route 163 and several homeless camps occur in the southeast portion of this section. OHV use is extensive, particularly in the desert wash areas of both sections.

Section 1 of the action area occurs west of the Davis Dam Road within the Lake Mead NRA and Reclamation land. Land southwest of Davis Dam Road is steep and rocky, although a small area with sparse vegetation exists between the hillside and an active highway. The northwest side of Davis Dam Road to the Colorado River consists of an abandoned Day-Use facility called Sportsman's Park. An abandoned campground on this section supports a mature stand of deciduous trees with sparse groundcover or shrubs. In section 12, most work activities would be located on previously disturbed areas close to existing roads and should not impact surrounding desert tortoise habitat. Both sections 1 and 12 consist of a narrow band of riparian vegetation (3.3. acres) mainly comprised of tamarisk, quailbush, and arrowweed. Casual OHV use occurs in sections 1 and 12.

#### Factors Affecting the Species in the Action Area

Critical habitat for the desert tortoise exists immediately north of sections 10 and 11 on lands managed by NPS. The Piute-Eldorado DWMA for the desert tortoise lies 0.2 miles to the north of section 10 along State Route 163. Density of the tortoise within this DWMA ranges from 40 to 90 tortoises per square mile (Service 1994). The south side of sections 10 and 11 are bordered by public lands administered by BLM. Most of the east side of section 11 is bordered by NDOW lands; and west and southeast of the project area are bordered by private land and the town of Laughlin, respectively.

Because the project area is in close proximity to the town of Laughlin, human use of this area for hiking, sightseeing, illegal OHV use, and horseback riding frequently occurs. The presence of a nearby sanitary landfill northwest of the project area contributes to the abundance of common ravens which are attracted to such areas. NDOW has instituted raven control measures at the landfill.

Since the Mojave population of the desert tortoise was first listed under the Act in 1989, three regional-level habitat conservation plans (HCPs) have been implemented for development of desert tortoise habitat in Clark County, Nevada. Approximately 89 percent of Clark County

consisted of public lands administered by the Federal government, thereby providing little opportunity for mitigation for the loss of desert tortoise habitat under an HCP on non-Federal lands. Alternatively, funds are collected under HCPs and spent to implement conservation and recovery actions on Federal lands as mitigation for impacts that occur on non-Federal lands. BLM-managed lands are included in these areas where mitigation funds are used to promote recovery of the desert tortoise.

On May 23, 1991, the Service issued a biological opinion on the issuance of incidental take permit PRT-756260 (File No. 1-5-91-FW-40) under section 10(a)(1)(B) of the Act. The Service concluded that incidental take of 3,710 desert tortoises on up to 22,352 acres of habitat within the Las Vegas Valley and Boulder City in Clark County, Nevada, was not likely to jeopardize the continued existence of the desert tortoise. The permit application was accompanied by the Short-Term HCP for the Desert Tortoise in the Las Vegas Valley, Clark County, Nevada (Regional Environmental Consultants [RECON] 1991) (Short-term HCP) and an implementation agreement that identified specific measures to minimize and mitigate the effects of the action on desert tortoises.

On July 29, 1994, the Service issued a non-jeopardy biological opinion on the issuance of an amendment to incidental take permit PRT-756260 (File No. 1-5-94-FW-237) to extend the expiration date of the existing permit by one year (to July 31, 1995) and include an additional disturbance of 8,000 acres of desert tortoise habitat within the existing permit area. The amendment did not authorize an increase in the number of desert tortoises allowed to be taken under the existing permit. Additional measures to minimize and mitigate the effects of the amendment were also identified. Approximately 1,300 desert tortoises were taken under the authority of PRT-756260, as amended. In addition, during the Short-term HCP, as amended, approximately 541,000 acres of desert tortoise habitat have been conserved in Clark County on lands administered by BLM and NPS.

On July 11, 1995, the Service issued an incidental take permit (PRT-801045) to Clark County, Nevada, including cities within the county and Nevada Department of Transportation (NDOT), under the authority of section 10(a)(1)(B) of the Act. The permit became effective August 1, 1995, and allowed the "incidental take" of desert tortoises for a period of 30 years on 111,000 acres of non-Federal land in Clark County, and approximately 2,900 acres associated with NDOT activities in Clark, Lincoln, Esmeralda, Mineral, and Nye counties, Nevada. The Clark County Desert Conservation Plan (DCP) served as the permittees' HCP and detailed their proposed measures to minimize, monitor, and mitigate the effects of the proposed take on the desert tortoise (RECON 1995). The permittees and NDOT imposed and paid a fee of \$550 per acre of habitat disturbance to fund these measures. The permittees expended approximately \$1.65 million per year to minimize and mitigate the potential loss of desert tortoise habitat. The majority of these funds were used to implement minimization and mitigation measures, such as increased law enforcement; construction of highway barriers; road designation, signing, closure, and rehabilitation; and tortoise inventory and monitoring within the lands managed for tortoise recovery (e.g., DWMAs). The benefit to the species, as provided by the DCP, substantially

minimized and mitigated those effects that occurred through development within the permit area and aided in recovery of the desert tortoise.

On November 22, 2000, the Service issued an incidental take permit (TE-034927) to Clark County, Nevada, including cities within the county and NDOT which supersedes the DCP permit. In the biological/conference opinion (File No. 1-5-00-FW-575), the Service determined that issuance of the incidental take permit to Clark County would not jeopardize the listed desert tortoise or southwestern willow flycatcher, or any of the 76 species that are not listed or not proposed for listing under the Act that are covered under the incidental take permit. Under the special terms and conditions of the permit, take of avian species, with the exception of Peregrine falcon (*Falco peregrinus anatum*) and phainopepla (*Phainopepla nitens*), would not be authorized until acquisition of private lands in desert riparian habitats in southern Nevada has occurred. The incidental take permit allows incidental take of covered species for a period of 30 years on 145,000 acres of non-Federal land in Clark County, and within NDOT rights-of-way, south of the 38th parallel in Nevada. The Clark County Multiple Species Habitat Conservation Plan (MSHCP) and Environmental Impact Statement (RECON 2000), serves as the permittees' HCP and details their proposed measures to minimize, mitigate, and monitor the effects of covered activities on the 78 species.

As partial mitigation under the DCP, carried forward in the MSHCP, Clark County purchased the Boulder City Conservation Easement (BCCE) from the City of Boulder City in 1994. The BCCE is for 50 years and will be retained in a natural condition with the purpose for recovery of the desert tortoise and conservation of other species in the area. Certain uses shall be prohibited within the BCCE, including motor vehicle activity off designated roads, livestock grazing, and any activity that is inconsistent with the purposes of the BCCE. Much of the BCCE is also designated desert tortoise critical habitat. Within the boundary of the BCCE, Boulder City reserved the Solar Energy Zone for energy development projects in addition to adjacent energy generation facilities described previously.

#### **IV. Effects of the Proposed Action**

We anticipate that the potential effects of the proposed action would occur as a result of construction of the golf course and associated facilities, multi-purpose event center, trails, and trailheads, and fencing in sections 10 and 11 (235 acres of desert tortoise habitat would be disturbed). In section 12, the trail system and associated trailheads occur within previously disturbed areas, along existing roads, or areas unsuitable for desert tortoises. In section 1, no tortoises or dens were observed and areas unsuitable for tortoises would be used for trail construction. A small amount of flatter terrain with sparse vegetation exists in a narrow band between the hillside and an active highway and would not be impacted by the proposed project. The riparian habitat in sections 1 and 12 do not contain suitable tortoise habitat. No impacts to desert tortoise are anticipated from work activities in sections 1 and 12.



Direct effects encompass the immediate, often obvious effect of the proposed action on the desert tortoise or its habitat. Indirect effects are caused by or will result from the proposed action and are later in time, but still reasonably certain to occur. In contrast to direct effects, indirect effects can often be more subtle, and may affect desert tortoise populations and habitat quality over an extended period of time, long after project activities have been completed. Indirect effects are of particular concern for long-lived species such as the desert tortoise, because project-related effects may not become evident in individuals or populations until years later.

Direct impacts to the desert tortoise would be the permanent loss of habitat utilized by tortoises for foraging, breeding, and cover in sections 10 and 11 of the project area. Desert tortoise burrows may be destroyed within the project area. In addition, any tortoise within the construction area during work activities would be highly vulnerable. Desert tortoises may be killed or injured by project vehicles and equipment in the project area. Construction equipment and vehicles could crush tortoises or collapse dens both occupied and unoccupied if not found during clearance surveys. Project vehicles and equipment that stray away from designated access roads and areas may crush desert tortoises above ground or in their burrows. Tortoises may take refuge underneath project vehicles and equipment and be killed or injured when the equipment or vehicle is moved. Tortoises that enter the project area during project activities may need to be captured and moved out of harm's way; as a result tortoises may be adversely affected if handled improperly. Reclamation's, BLM's, and NPS' proposal to provide an authorized biologist onsite in areas of desert tortoise habitat; conduct pre-activity tortoise clearance surveys; temporarily cease activities if a tortoise is located onsite until tortoise is out of harm's way; present a worker education program which includes but not limited to instructing personnel to check under parked vehicles before moving them; implement a speed limit; and restrict vehicles and equipment to flagged work area boundaries and designated access roads; and where feasible, disturbance would be avoided by moving the trail footprint around sensitive areas should minimize these effects.

Other direct impacts to desert tortoises could include tortoises killed or injured as a result of being trapped in open excavations. In addition, if fuel or other hazardous materials are spilled in desert tortoise habitat, tortoises may be adversely affected as a result. As minimization measures for these possible effects on desert tortoises, Reclamation, BLM, and NPS proposed to cover or immediately backfill excavations with a diameter greater than three inches. In addition, hazardous spills and contaminant spoils would be immediately cleaned up and removed from the site (Reclamation 2006).

The resulting indirect impacts to the desert tortoise may include the risk of death, injury, or collection of populations inhabiting the area. These additive long-term impacts are likely to occur due to increased use and access by the public to the action area and surrounding land. Tortoise injuries or losses may result from accidental human encounters from trail users going off the trail into desert tortoise habitat, collection of tortoises for pets, encounters with domestic pets, increased off-road travel (motorized and bicycle), and accidental encounters with maintenance workers and activities in the area. There also is a potential for an increase in the number of predatory and scavenger species due to the presence of humans and illegal trash dumping.

Workers associated with the proposed project may provide food in the form of trash and litter, or water, which attracts important tortoise predators such as the common raven, kit fox, and coyote (BLM 1990, Boarman and Berry 1995). Natural predation in undisturbed, healthy ecosystems is generally not an issue of concern. However, predation rates may be altered when natural habitats are disturbed or modified (BLM 1990). Ravens likely would be attracted to human activities and buildings associated with the golf course for perch sites and food sources, increase the potential for predation on juvenile desert tortoise in adjacent habitats. Traffic would increase in the area, elevating the risk of vehicle-related injury or mortality. In addition, if this project results in an increase in equestrian use outside of trailhead 3 to the Day-Use Area and within desert tortoise habitat, desert tortoises may be harassed by the increase in activity.

Reclamation, BLM, and NPS propose to minimize potential indirect effects mentioned above by implementing a desert tortoise awareness program and properly disposing of trash and food items in predator-proof containers daily. In addition, as part of the proposed action, a fence would be placed around the desert tortoise reserve area to prevent future human disturbance of this area.

## **V. Cumulative Effects**

Cumulative effects are those effects of future non-Federal (State, local government, or private) activities that are reasonably certain to occur in the project area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

Clark County, Nevada is one of the fastest growing counties in the United States. The population has more than doubled between 1990 and 2006, increasing from 770,000 to 1.87 million people ([www.nsbdc.org/what/data\\_statistics/demographer](http://www.nsbdc.org/what/data_statistics/demographer)). As the human population continues to grow in Clark County and surrounding areas, the need for recreation areas will increase as well as the use of existing recreation areas.

## **VI. Conclusion**

After reviewing the current status of the desert tortoise, the environmental baseline for the action area, the effects of the proposed project, and the cumulative effects, it is the Service's biological opinion that the project, as proposed and analyzed, is not likely to jeopardize the continued existence of the federally listed as threatened desert tortoise (Mojave population). This conclusion is primarily based on the following:

1. desert tortoises occur in very low densities in the project area; and
2. measures have been proposed by Reclamation, NPS, and BLM to substantially minimize the effects of the proposed action.

## INCIDENTAL TAKE STATEMENT

Section 9 of the Act, as amended, prohibits take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering (50 CFR § 17.3). "Harass" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR § 17.3). Incidental take is any take of listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant. Under the terms of sections 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The terms and conditions may include: (1) restating measures proposed by Reclamation, NPS, and BLM; (2) modifying the measures proposed by Reclamation, NPS, and BLM; or (3) specifying additional measures considered necessary by the Service. Where these terms and conditions vary from or contradict the minimization measures proposed under the Description of the Proposed Action, specifications in these terms and conditions shall apply. The measures described below are nondiscretionary and must be implemented by Reclamation, NPS, and BLM so that they become binding conditions of any project, contract, grant, or permit issued by Reclamation, NPS, and BLM as appropriate, in order for the exemption in section 7(o)(2) to apply. The Service's evaluation of the effects of the proposed actions includes consideration of the measures developed by Reclamation, NPS, and BLM, and repeated in the Description of the Proposed Action portion of this biological opinion, to minimize the adverse effects of the proposed action on the desert tortoise. Any subsequent changes in the minimization measures proposed by Reclamation, NPS, and BLM may constitute a modification of the proposed action and may warrant reinitiation of formal consultation, as specified at 50 CFR § 402.16. These reasonable and prudent measures are intended to clarify or supplement the protective measures that were proposed by Reclamation, NPS, and BLM as part of the proposed action. Reclamation, NPS, and BLM have a continuing duty to regulate the activity that is covered by this incidental take statement. If Reclamation, NPS, and BLM fail to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, and/or fail to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

### I. Amount of Take

Based on the analysis of effects provided above, measures proposed by Reclamation, NPS, and BLM, and anticipated project duration the Service anticipates that the following take could occur as a result of the proposed action:

1. The Service estimates that no more than one desert tortoise would be killed or injured as a result of the proposed project including visitor use after construction is completed.
2. All desert tortoises located in harm's way in work areas may be captured and moved by an authorized biologist. Based on the timing and duration of the project and desert tortoise survey data, the Service estimates that no more than two desert tortoises will be taken (i.e., other than killed or injured) as a result of project activities.
3. No desert tortoise eggs may be destroyed during project activities, although an unknown number of tortoise eggs may be affected (i.e., moved off the action area into undisturbed habitat by the authorized biologist).
4. An unknown number of desert tortoises may be preyed upon by ravens or other subsidized desert tortoise predators drawn to trash in the project area.

## **II. Effect of the Take**

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the species.

## **III. Reasonable and Prudent Measures**

The Service believes that the following reasonable and prudent measures are necessary and appropriate to minimize take of desert tortoise:

1. Reclamation, NPS, and BLM shall implement measures to minimize injury or mortality of desert tortoises as a result of project activities.
2. Reclamation, NPS, and BLM shall implement measures to minimize predation on desert tortoises by predators drawn to the project area.
3. Reclamation, NPS, and BLM shall implement measures to minimize destruction of desert tortoise habitat, such as soil compaction, erosion, introduction of non-native invasive plants, or crushed vegetation, due to project activities.
4. Reclamation, NPS, and BLM shall implement measures to ensure compliance with the reasonable and prudent measures, terms and conditions, reporting requirements, and reinitiation requirements in this biological opinion.

#### IV. Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, Reclamation, NPS, and BLM must fully comply with the following terms and conditions, which implement the reasonable and prudent measures described above.

1. To implement Reasonable and Prudent Measure Number 1, Reclamation, NPS, and BLM shall ensure implementation of the following measures to minimize mortality or injury of desert tortoise:
  - a. Reclamation, NPS, and BLM shall ensure that an authorized desert tortoise biologist is on-site during construction activities, with exception of work activities in the proposed Day-Use Area, river walk trail, and any other areas in sections 1 and 12 that do not have desert tortoise habitat, for the duration of the project. In accordance with Procedures for Endangered Species Act Compliance for the Mojave Desert Tortoise (Service 1992), an authorized desert tortoise biologist should possess a bachelor's degree in biology, ecology, wildlife biology, herpetology, or closely related fields as determined by the Service. The biologist must have demonstrated prior field experience using accepted resource agency techniques to survey for desert tortoises and tortoise sign, which should include a minimum of 60 days field experience. All tortoise biologists shall comply with the Service-approved handling protocol (DTC 1994, revised 1999). In addition, the biologist shall have the ability to recognize and accurately record survey results and must be familiar with the terms and conditions of the biological opinion. Potential biologists and monitors shall complete the attached form (Attachment A) and submit it to Reclamation and the Service for review and approval.
  - b. A desert tortoise education program shall be presented to all personnel onsite during construction of the proposed project. The program will include information on the biology and distribution of the desert tortoise, its legal status and occurrence in the proposed project area, the definition of "take" and associated penalties, the measures designed to minimize the effects of construction activities, methods employees can use to implement the measures, and reporting procedures to be used when desert tortoises are encountered. The program shall instruct participants to report all observations of listed species and their sign during construction activities to the authorized biologist. Personnel also will be instructed to check under vehicles before moving them as tortoises often seek shelter under parked vehicles.
  - c. All areas to be disturbed shall have boundaries flagged before beginning the activity and all disturbances shall be confined to the flagged areas. All project personnel will be instructed that their activities must be confined to locations

within flagged areas. Disturbance beyond the actual construction zone will be prohibited.

- d. The project area, with the exception of the proposed Day-Use Area, river walk trail, and any other areas that do not have desert tortoise habitat, shall be surveyed by an authorized biologist for desert tortoises and their burrows immediately prior (within 24 hours) to the onset of construction. The surveys will provide 100-percent coverage of the project construction area. All potential tortoise burrows will be identified and flagged for avoidance or excavation. All desert tortoise surveys, handling of desert tortoises, and burrow excavation will be performed only by an authorized biologist.

Special precautions shall be taken to ensure that desert tortoises are not harmed as a result of their capture and movement during extreme temperatures (i.e., air temperatures below 55° F or above 95° F). Under such adverse conditions, tortoises captured will be monitored continually by an authorized biologist until the tortoise exhibits normal behavior. If a desert tortoise shows signs of heat stress, procedures will be implemented as identified in Service-approved protocols (Desert Tortoise Council 1994, revised 1999).

- e. All burrows located within areas proposed for disturbance, whether occupied or vacant, shall be excavated by a qualified biologist and collapsed or blocked to prevent desert tortoise re-entry. All burrows will be excavated with hand tools to allow removal of desert tortoises or desert tortoise eggs. All desert tortoise handling and excavations, including nests, will be conducted by a qualified desert tortoise biologist in accordance with Service-approved protocol (Desert Tortoise Council 1994, revised 1999).
- f. All located desert tortoises and desert tortoise eggs shall be relocated offsite into undisturbed habitat. Reclamation will work with the Service to identify an appropriate site north of Highway 163.
- g. The onsite biologist shall record each observed or handled desert tortoise. Information will include the following: Location, date and time of observation, whether the tortoise was handled, general health and whether it voided its bladder, location tortoise was moved from and location moved to, and unique physical characteristics of each tortoise.
- h. Project activities that may endanger a tortoise shall cease if a tortoise is found on a project site. Project activities will resume after the qualified biologist removes the tortoise from danger or after the tortoise has moved to a safe area.

- i. A speed limit of 25 miles per hour shall be maintained while on the construction site, access roads, and storage areas. This effort will reduce dust and allow a safe speed at which personnel can observe desert tortoises in the road.
  - j. Any pipe, culverts or similar structures with a diameter greater than 3 inches that are stored on the construction site (within desert tortoise habitat) for one or more nights, shall be inspected for tortoises before the material is moved, buried or capped. As an alternative, all such structures may be capped before being stored on the construction site.
  - k. During the period of highest tortoise activity (approximately March 1 through October 31), all trenches and other excavations with side slopes steeper than a 1-ft rise to 3-ft length shall be immediately backfilled prior to being left unattended, or: (1) fenced with tortoise-proof fencing, (2) covered with tortoise-proof fencing, (3) covered with plywood or a similarly impassable material, or (4) constructed with escape ramps at each end of the trench and every 1,000 ft in between (at a minimum). All coverings and fences will have zero ground clearance. If alternative (4) is selected, the trench or other excavation will be inspected periodically and following periods of substantial rainfall to ensure structural integrity and that escape ramps are functional. An open trench or other excavation will be inspected for entrapped animals immediately prior to backfilling. If at any time a tortoise is discovered within a trench, all activity associated with that trench will cease until an authorized biologist has removed the tortoise in accordance with Service-approved guidelines (Desert Tortoise Council 1994, revised 1999).
2. To implement Reasonable and Prudent Measure Number 2, Reclamation, NPS, and BLM shall ensure implementation of the following measures to minimize predation on tortoises by ravens or other desert tortoise predators attracted to the project area:
- Trash and food items shall be disposed properly in predator-proof containers with resealing lids. During construction activities, trash containers will be emptied and waste will be removed from the project area daily. Trash removal reduces the attractiveness of the area to opportunistic predator such as desert kit fox, coyotes, and common ravens.
3. To implement Reasonable and Prudent Measure Number 3, Reclamation, NPS, and BLM shall ensure implementation of the following measures to minimize loss and long-term degradation and fragmentation of desert tortoise habitat, such as soil compaction, erosion, crushed vegetation, introduction of weeds or contaminants as a result of construction activities:
- a. Where feasible, disturbance shall be avoided by moving the trail footprint around sensitive areas. If disturbance is unavoidable, Reclamation, NPS, and BLM will,

if possible, either minimize the area of disturbance or replace affected vegetation in-kind onsite.

- b. All construction, operation and maintenance activities shall be conducted in a manner that minimizes disturbance to vegetation and drainage channels.
- c. Cross-country travel and travel outside construction zones shall be prohibited.
- d. Reclamation shall ensure payment by the project proponent, Clark County, of remuneration fees to be deposited into the Desert Tortoise Public Lands Conservation Fund (account number 730-9999-2315) (section 7 account) for compensation of the loss of desert tortoise habitat as a result of the proposed project. We understand that the project will be developed in phases or project elements as the funding becomes available for the different approved elements over a number of years. Reclamation shall require a receipt of payment from Clark County, which will be kept on file by Reclamation, for each project element prior to any construction activities.
- e. The proposed project will disturb 235 acres of desert tortoise habitat on Federal lands. Currently, the compensation rate for disturbance to desert tortoise habitat in the project area is \$723 per acre. Each year these fees will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U). Information on the CPI-U can be found on the internet at: <http://stats.bls.gov/news.release/cpi.nr0.htm>. The next rate adjustment will occur on March 1, 2008. The section 7 payments shall be accompanied by the attached Section 7 Fee Payment Form (Enclosure B), and completed by the payee. The project proponent or applicant may receive credit for payment of such fees and deduct such costs from desert tortoise impact fees charged by local government entities. Payment shall be by certified check or money order payable to Clark County and delivered to:

Clark County Desert Conservation Program  
c/o Dept. of Air Quality and Environmental Management  
Clark County Government Center  
500 S. Grand Central Parkway, first floor (front counter)  
Las Vegas, Nevada 89106  
(702) 455-5821

- 4. To implement Reasonable and Prudent Measure Number 4, Reclamation, NPS, and BLM shall ensure implementation of the following measures to ensure compliance with the reasonable and prudent measures, terms and conditions, reporting requirements, and reinitiation requirements contained in this biological opinion:



- a. Reclamation, NPS, and BLM shall designate an authorized desert tortoise biologist who will be responsible for overseeing compliance with protective stipulations for the desert tortoise and coordinating with the Service. The authorized biologist shall have the authority to halt activities that may be in violation of the stipulations.

The authorized biologist shall record each observation of desert tortoise handled. Information shall include the following: Location, date and time of observation; whether tortoise was handled, general health and whether it voided its bladder; location tortoise was moved from and location moved to; and unique physical characteristics of each tortoise. A final report shall be submitted to the Service's Southern Nevada Field Office in Las Vegas, Nevada, within 90 days of completion of the project.

## **V. Conclusion**

The Service estimates that no more than one desert tortoise would be killed or injured as a result of the proposed project including visitor use after construction is completed. The Service also estimates that no more than two tortoises may be taken by capture and moved out of harm's way during the project; an unknown number of desert tortoises are anticipated to be taken in the form of indirect mortality through predation by ravens drawn to the project area; and no desert tortoise eggs may be destroyed during project activities, although an unknown number of tortoise eggs may be affected (i.e., moved off the action area into undisturbed habitat by the authorized biologist).

In addition, up to 235 acres of low-density desert tortoise habitat may be lost as a result of project activities. The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. If, during the course of the action, the level of incidental take or loss of habitat identified is exceeded, such incidental take and habitat loss represents new information requiring reinitiation of consultation and review of the reasonable and prudent measures provided. Reclamation, NPS, and BLM must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

## **VI. Reporting Requirements**

Upon locating a dead or injured endangered or threatened species, initial notification must be made to the Service's Southern Nevada Field Office in Las Vegas, Nevada at (702) 515-5230. Care should be taken in handling sick or injured desert tortoises to ensure effective treatment; care should be taken for the handling of dead specimens to preserve biological material in the best possible state for later analysis of cause of death. In conjunction with the care of injured desert tortoises or preservation of biological materials from a dead animal, the finder has the responsibility to carry out instructions provided by the Service to ensure that evidence intrinsic to

the specimen is not unnecessarily disturbed. All deaths, injuries, and illnesses of desert tortoises, whether associated with project activities or not, will be summarized in an annual report.

The following actions should be taken for injured or dead tortoises if directed by the Service:

1. Injured desert tortoises shall be delivered to any qualified veterinarian for appropriate treatment or disposal.
2. Dead desert tortoises suitable for preparation as museum specimens shall be frozen immediately and provided to an institution holding appropriate Federal and State permits per their instructions.
3. Should no institutions want the desert tortoise specimens, or if it is determined that they are too damaged (crushed, spoiled, etc.) for preparation as a museum specimen, then they may be buried away from the project area or cremated, upon authorization by the Service.
4. Reclamation, NPS, BLM or the project proponent shall bear the cost of any required treatment of injured desert tortoises or cremation of dead desert tortoises.
5. Should injured desert tortoises be treated by a veterinarian and survive, they may be transferred as directed by the Service.

### CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to use their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

We recommend that construction activities within desert tortoise habitat occur from November through February to further minimize or avoid impacts to the desert tortoise which is generally inactive during this period.


We understand that there are tentative plans to develop an education program regarding native flora and fauna within the trail system. We recommend that the desert tortoise be incorporated into the education program, and that you consider including the reserve areas in such a program.

In order for the Service to be kept informed of actions minimizing or avoiding adverse impacts, or benefiting listed species or their habitats, we request notification of the implementation of our conservation recommendation.

**REINITIATION**

This concludes formal consultation on the actions outlined in your December 5, 2006, request. As required by 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over an action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

For further information on the desert tortoise, please contact Leilani Takano of the Southern Nevada Field Office at (702) 515-5230. Please reference Service file number 1-5-07-F-458 for any future correspondence relating to this consultation.

  
For Robert D. Williams

**Attachments**

cc:

Assistant Field Manager, Bureau of Land Management, Division of Recreation and Renewable Resources, Las Vegas, Nevada  
Superintendent, National Park Service, Lake Mead National Recreation Area, Boulder City, Nevada

## LITERATURE CITED

- Berry, K. H. 1986. Desert tortoise (*Gopherus agassizii*) research in California, 1976-1985. *Herpetologica* 42:62-67.
- Berry, K. H. 2003. Declining trends in desert tortoise populations at long-term study plots in California between 1979 and 2002: multiple issues. Abstract of paper presented at the Twenty-eighth Annual Meeting of the Desert Tortoise Council.
- Berry, K. H. and B. L. Burge. 1984. The desert tortoise in Nevada. Chapter 8 In: The status of the desert tortoise (*Gopherus agassizii*) in the United States: Report to U.S. Fish and Wildlife Service from the Desert Tortoise Council. Order No. 11310-0083-81.
- Berry, K. H., E. K. Spangenberg, B. L. Homer, and E. R. Jacobson. 2002. Deaths of desert tortoises following periods of drought and research manipulation. *Chelonian Conservation and Biology* 4:436-448.
- BLM (Bureau of Land Management). 1990. Draft Raven Management Plan for the California Desert Conservation Area. Prepared by Bureau of Land Management, California Desert District, Riverside, California. April 1990.
- Boarman, W. I. and K. H. Berry. 1995. Common ravens in the southwestern United States, 1968-92. Pages 73-75 in E. T. LaRoe, G. F. Farris, C. E. Puckett, P. D. Doran, and M. J. Mac, editors. Our living resources: A report to the nation on the distribution, abundance, and health of U.S. plants, animals, and ecosystems. National Biological Service. Washington, D.C.
- Borysenko, M., and S. Lewis. 1979. The effect of malnutrition on immunocompetence and whole body resistance to infection in *Chelydra serpentina*. *Developmental and Comparative Immunology* 3:89-100.
- Britten, H. B., B. R. Riddle, P. F. Brussard, R. W. Marlow and T. E. Lee, Jr. 1997. Genetic delineation of management units for the desert tortoise, *Gopherus agassizii*, in northeastern Mojave Desert. *Copeia* 1997: 523-530.
- Brooks, M.L. 1998. Alien annual grass distribution, abundance, and impact on desert tortoise habitat in the western Mojave Desert. Ph.D. Dissertation. University of California at Riverside.
- Brooks, M. L., and T.C. Esque. 2002. Alien plants and fire in desert tortoise (*Gopherus agassizii*) habitat of the Mojave and Colorado deserts. *Chelonian Conservation and Biology* 4:330-340.
- Brown, D. E., and R. A. Minnich. 1986. Fire and changes in creosote bush scrub of the western Sonoran Desert, California. *American Midland Naturalist* 116(2):411-422.

- Brown, M. B., K. H. Berry, I. M. Schumacher, K. A. Nagy, M. M. Christopher, and P. A. Klein. 1999. Seroepidemiology of upper respiratory tract disease in the desert tortoise of California. *Journal of Wildlife Diseases* 35(4):716-727.
- Brown, M. B., I. M. Schumacher, P. A. Klein, K. Harris, T. Correll, and E. R. Jacobson. 1994. *Mycoplasma agassizii* causes upper respiratory tract disease in the desert tortoise. *Infection and Immunity* 62: 4580-4586.
- Brown, D. R., I. M. Schumacher, G. S. McLaughlin, L. D. Wendland, M. B. Brown, P. A. Klein, and E. R. Jacobson. 2002. Application of diagnostic tests for mycoplasmal infections of the desert and gopher tortoises, with management recommendations. *Chelonian Conservation and Biology* 4:497-507.
- Burge, B. L. 1978. Physical characteristics and patterns of utilization of cover sites by *Gopherus agassizii* in southern Nevada. *Proceedings of the 1978 Desert Tortoise Council Symposium*. Pages 80-111.
- Burge, B. L., and W. G. Bradley. 1976. Population density, structure and feeding habits of the desert tortoise (*Gopherus agassizii*), in a low desert study area in southern Nevada. *Proceedings of the 1976 Desert Tortoise Council Symposium*. Pages 51-74.
- Bury, R. B. 1987. Off-road vehicles reduce tortoise numbers and well-being. U. S. Department of the Interior, Fish and Wildlife Service, National Ecology Research Center, Fort Collins, Colorado. Research Information Bulletin Number 87-6.
- Bury, R. B., T. C. Esque, L. A. DeFalco, and P. A. Medica. 1994. Distribution, habitat use, and protection of the desert tortoise in the Eastern Mojave Desert. In: R. B. Bury and D. J. Germano, editors. *Biology of the North American tortoises*. National Biological Survey, Fish and Wildlife Research 13:57-72.
- Christopher, M. M., K. H. Berry, B. T. Henen, and K. A. Nagy. 2003. Clinical disease and laboratory abnormalities in free-ranging desert tortoises in California (1990-1995). *Journal of Wildlife Diseases* 39:35-56.
- Desert Tortoise Council. 1994. Guidelines for handling desert tortoises during construction projects. Edward L. LaRue, Jr., editor. San Bernardino, California. Revised 1999.
- Gates, J.E. and L.W. Gysel. 1978. Avian nest dispersion and fledgling success in field-forest ecotones. *Ecology* 59: 871-883.
- General Accounting Office (GAO). 2002. Endangered species: research strategy and long-term monitoring needed for the Mojave desert tortoise recovery program. GAO-03-23. Washington, DC. 53 pp.

- Germano, D. J., R. B. Bury, T. C. Esque, T. H. Fritts, and P. A. Medica. 1994. Range and habitat of the desert tortoise. In: R. B. Bury and D. J. Germano, editors. Biology of the North American tortoises. National Biological Survey, Fish and Wildlife Research 13:57-72.
- Goodlett, G., and A. P. Woodman. 2003. Desert tortoise population survey at Virgin Slope desert tortoise study plot, spring 2003. Unpublished report prepared for Arizona Game and Fish Department, Nongame, Contract G90040-K, Phoenix, Arizona.
- Hanski, I. 1999. Metapopulation Ecology. Oxford University Press. Oxford.
- Henen, B. T. 1997. Seasonal and annual energy and water budgets of female desert tortoises (*Gopherus agassizii*) at Goffs, California. Ecology 78:283-296.
- Hovik, D. C. and D. B. Hardenbrook. 1989. Summer and fall activity and movements of desert tortoise in Pahrump Valley, Nevada. Abstract of paper presented at the Fourteenth Annual Meeting of the Desert Tortoise Council.
- Jacobson, E. R., T. J. Wronski, J. Schumacher, C. Reggiardo, and K.H. Berry. 1994. Cutaneous dyskeratosis in free-ranging desert tortoises, *Gopherus agassizii*, in the Colorado Desert of Southern California. J. Zoo and Wildlife Medicine 25(1):68-81.
- Johnson, R.G. and S.A. Temple. 1990. Nest predation and brood parasitism of tall-grass prairie birds. Journal of Wildlife Management. 54: 106-111.
- Karl, A. 1981. The distribution and relative densities of the desert tortoise (*Gopherus agassizii*) in Lincoln and Nye Counties, Nevada. Proceedings of the 1981 Desert Tortoise Council Symposium. Pages 76-92.
- Karl, A. E. 1983a. The distribution and relative densities of the desert tortoise (*Gopherus agassizii*) in Clark County, Nevada. Unpublished Report to Bureau of Land Management, Denver, Colorado. Contract No. YA-512-CT9-90. 46 pp.
- Karl, A. E. 1983b. The distribution, relative densities, and habitat associations of the desert tortoise (*Gopherus agassizii*) in Nevada. M.S. Thesis, California State University, Northridge. 111 pp.
- Lamb, T., J. C. Avise, J. W. Gibbons. 1989. Phylogeographic patterns in mitochondrial DNA of the desert tortoise (*Xerobates agassizii*), and evolutionary relationships among North American gopher tortoises. Evolution 43: 76-87.
- Lamb, T., and C. Lydehard. 1994. A molecular phylogeny of the gopher tortoises, with comments on familiar relationships within the Testudinoidea. Molecular Phylogenetics and Evolution 3: 283-91.

- Levins R., and D. Culver. 1971. Regional coexistence of species and competition between rare species. *Proceedings of the National Academy of Sciences* 68:1246-1248.
- Levin S. A., D. Cohen, A. Hastings. 1984. Dispersal strategies in patchy environments. *Theoretical Population Biology* 26:165-191.
- Longshore, K. M., J. R. Jaeger, and J. M. Sappington. 2003. Desert tortoise (*Gopherus agassizii*) survival at two eastern Mojave Desert sites: death by short-term drought? *Journal of Herpetology* 37:169-177.
- Luckenbach, R. A. 1982. Ecology and management of the desert tortoise (*Gopherus agassizii*) in California. In: R. B. Bury, editor. *North American tortoise: Conservation and ecology*. U.S. Fish and Wildlife Service, Wildlife Research Report 12, Washington, D.C.
- McLuckie, A. M. and R. A. Fridell. 2002. Reproduction in a desert tortoise population on the Beaver Dam Slope, Washington County, Utah. *Chelonian Conservation and Biology* 2002, 4(2):288-294.
- McLuckie, A. M., M. R. M. Bennion, and R. A. Fridell. Draft 2006. Regional desert tortoise monitoring in the Red Cliffs Desert Reserve, 2005. Salt Lake City: Utah Division of Wildlife Resources, Publication Number 06-06. 44 pp.
- Mueller, J. M., K. R. Sharp, K. K. Zander, D. L. Rakestraw, K. P. Rautenstrauch, and P. E. Lederle. 1998. Size-specific fecundity of the desert tortoise (*Gopherus agassizii*). *Journal of Herpetology* 32:313-319.
- Noss, R. F. and A. Y. Cooperrider. 1994. *Saving nature's legacy. Protecting and restoring biodiversity*. Island Press. Covelo, California.
- Origi, R., C. H. Romero, P. A. Klein, K. H. Berry, and E. R. Jacobson. 2002. Serological and molecular evidences of herpesvirus exposure in desert tortoises from the Mojave Desert of California. Abstract of paper presented at the twenty-seventh annual meeting of the Desert Tortoise Council.
- Peterson, C. C. 1994. Different rates and causes of high mortality in two populations of the threatened desert tortoise *Gopherus agassizii*. *Biological Conservation* 70:101-108.
- Peterson, C. C. 1996. Ecological energetics of the desert tortoise (*Gopherus agassizii*): effects of rainfall and drought. *Ecology* 77:1831-1844.
- Rainboth, W. J., D. G. Booth, and F. B. Turner. 1989. Allozyme variation in Mojave populations of the desert tortoise. *Copeia* 1989: 115-123.

- Reclamation (U.S. Bureau of Reclamation). 2002. Biological Assessment for Davis Dam Lands, Commercial Recreation Facilities and Services in Sections 10, 11, and 1, T. 32 S., R. 66E. Clark County, Nevada. 35 pp. plus appendices.
- Reclamation (U.S. Bureau of Reclamation). 2006. Biological Assessment for the Laughlin Regional Park and Regional Heritage Greenway Trails-North Reach Project, City of Laughlin, Clark County, Nevada. 38pp.
- RECON (Regional Environmental Consultants). 1991. Short-term habitat conservation plan for the desert tortoise in Las Vegas Valley, Clark County, Nevada. Prepared for Clark County, 225 Bridger Avenue, Las Vegas, Nevada 89155. January 1991. 143 pages.
- RECON (Regional Environmental Consultants). 1995. Clark County desert conservation plan. Prepared for Clark County, 500 Grand Central Parkway, Las Vegas, Nevada 89155. 129 pp. plus appendices.
- RECON (Regional Environmental Consultants). 2000. Clark County multiple species habitat conservation plan. Prepared for Clark County, 500 Grand Central Parkway, Las Vegas, Nevada 89155.
- Rich, A.C., D.S. Dobkin, and L.J. Niles. 1994. Defining forest fragmentation by corridor width: The influence of narrow forest-dividing corridors on forest-nesting birds in southern News Jersey. *Conservation Biology* 8: 1109-1121.
- Service (Fish and Wildlife Service). 1992. Procedures for Endangered Species Act compliance for the Mojave desert tortoise. Regions 1, 2 and 6. October 1992. 18 pp. plus appendices.
- Service (Fish and Wildlife Service). 1994. Desert Tortoise (Mojave Population) Recovery Plan. U.S. Fish and Wildlife Service, Portland, OR. 73 pp. plus appendices.
- Service (Fish and Wildlife Service). 2002. Southwestern Willow Flycatcher Recovery Plan. Albuquerque, New Mexico. i-ix + 210 pp., Appendices A-O.
- Service (Fish and Wildlife Service). 2006. Range-wide monitoring of the Mojave population of the desert tortoise: 2001-2005. Summary report prepared by the Desert Tortoise Recovery Office, Reno, Nevada.
- Tracy, C. R., R. Averill-Murray, W. I. Boarman, D. Delahanty, J. Heaton, E. McCoy, D. Morafka, K. Nussear, B. Hagerty, and P. Medica. 2004. Recovery Plan assessment. Unpublished report. 254 pages.
- Turner, R. M. 1982. Mohave desertscrub. In: *Biotic communities of the American southwest-United States and Mexico*. D. E. Brown, editor. Special issue of desert plants, volume 4. Pages 157-168.



- Turner, R. M. and D. E. Brown. 1982. Sonoran desert scrub. In: Biotic communities of the American southwest-United States and Mexico. D. E. Brown, editor. Special issue of desert plants, volume 4. Pages 181-221.
- Turner, F. B., P. A. Medica, and C. L. Lyons. 1984. Reproduction and survival of the desert tortoise (*Scaptochelys agassizii*) in Ivanpah Valley, California. Copeia 1984(4):811-820.
- Walker, M. and P. Woodman. 2002. Desert tortoise population survey at Beaver Dam Slope enclosure desert tortoise study plot; spring, 2001. Report to Arizona Game and Fish Department, Phoenix, Arizona.
- Weinstein, M., K. H. Berry, and F. B. Turner. 1987. An analysis of habitat relationships of the desert tortoise in California. A report prepared for Southern California Edison Company. 96 pages.
- Wilson, D. S., K. A. Nagy, C. R. Tracy, D. J. Morafka, and R. A. Yates. 2001. Water balance in neonate and juvenile desert tortoises, *Gopherus agassizii*. Herpetological Monographs 15:158-170.
- Young, R., C. Halley, and A. P. Woodman. 2002. Desert tortoise population survey at Littlefield desert tortoise study plot, spring 2002. Unpublished report prepared for Arizona Game and Fish Dept, Nongame, Contract G40088-001, Phoenix, Arizona.

## ATTACHMENT A

### DESERT TORTOISE MONITOR AND BIOLOGIST RESPONSIBILITIES AND QUALIFICATIONS

**DESERT TORTOISE MONITOR** -- Approved by the Fish and Wildlife Service to monitor project activities within desert tortoise habitat, ensure proper implementation of protective measures, and record and report desert tortoise and sign observations in accordance with approved protocol, report incidents of noncompliance in accordance with a biological opinion or permit, move desert tortoises from harm's way when desert tortoises enter project sites and place these animals in "safe areas" pre-selected by Authorized Biologists or maintain the desert tortoises in their immediate possession until an Authorized Biologist assumes care of the animal. Monitors assist Authorized Biologists during surveys and often serve as "apprentices" to acquire experience. Monitors are not authorized to conduct presence/absence or clearance surveys unless directly supervised by an Authorized Biologist; "directly supervised" means the Authorized Biologist is direct voice and sight contact with the Monitor.

**AUTHORIZED BIOLOGIST** -- Approved by the Fish and Wildlife Service to conduct all activities described in the previous section for Desert Tortoise Monitors, and to locate desert tortoises and their sign (i.e., conduct presence/absence and clearance surveys) and ensure that the effects of the project on the desert tortoise and its habitat are minimized in accordance with a biological opinion incidental take permit. Authorized Biologists must keep current with the latest information on U.S. Fish and Wildlife Service protocols and guidelines. An Authorized Biologist must have thorough and current knowledge of desert tortoise behavior, natural history, and ecology, physiology, and demonstrated substantial field experience and training to safely and successfully:

- handle and temporarily hold desert tortoises
- excavate burrows to locate desert tortoise or eggs
- relocate/translocate desert tortoises
- reconstruct desert tortoise burrows
- unearth and relocate desert tortoise eggs
- locate, identify, and record all forms of desert tortoise sign

### GENERAL DESERT TORTOISE BIOLOGIST/MONITOR QUALIFICATIONS STATEMENT

This form should be used to provide your qualifications to agency officials if you intend to handle or survey desert tortoises during construction or other projects authorized under Sections 7 or 10 (HCPs) of the Endangered Species Act. If you seek approval to attach/remove/insert any devices or equipment to/into desert tortoises, withdraw blood, or conduct other procedures on desert tortoises, a recovery permit or similar authorization may be required.

Application for a recovery permit requires completion of Form 3-200-55, which can be downloaded at <http://www.fws.gov/forms/3-200-55.pdf>. Supplemental information for the recovery permit application should be provided with the form, *Statement of Skills and Experience with Specialized Desert Tortoise Procedures*, which is available from a U.S. Fish and Wildlife Service Field Office.

#### 1. Contact Information:

Name	
Address	
City, State, Zip Code	
Phone Number(s)	
Email Address	

2. Date of Statement:

3. States in which authorization is requested (check all that apply):

☐ California ☐ Nevada ☐ Utah ☐ Arizona

4. Please provide information on the project:

USFWS BO or HCP Number		Date:	
Project Name			
Federal Agency			
Proponent or Contractor			

5. Specify project and/or activities anticipated that require authorization (e.g. capture/release, weigh, measure, attach and remove telemetry devices and other hardware, etc.). Specifically reference the relevant document and page numbers with authorizing statements (e.g., BO, page 19, terms and conditions 6, 7, and 8):

6. If you hold, or have held, any relevant state or federal wildlife permits, provide the following:

Species	Dates	State (specify) or Federal Permit Number	Authorized Activities

7. Education (provide up to three, listing most recent first):

Institution	Dates attended	Major/Minor	Degree received
1.			
2.			
3.			

**8. Desert Tortoise Training. Include numbers of animals handled under the Experience section (No. 9 below).**

Name/Type of Training	Dates (From/To)	Location	Instructor/Sponsor
1.			
2.			
3.			
4.			

**9. Experience** – Complete for each position held, attach additional sheets as necessary. Include only those positions relevant to the requested work with desert tortoises. Distinguish between Mojave desert tortoise and other experience. Include only your experience, not information for the project you worked on (e.g. if 100 tortoises were handled on a project and you handled 5 of those tortoises, include only those 5). List most recent experience first.

**General Field Experience:**

Project Name & Job Title	Dates (From/To)	Job Duties & Responsibilities/ Skills Used or Acquired
1.		
2.		
3.		
4.		

Specific Desert Tortoise Field Experience:						
a. Number of hours or 8-hour days (specify) conducting desert tortoise-related activities (referenced above):						
b. Number of miles/kilometers walked conducting survey transects:						
c. Number of wild, free-ranging desert tortoises you encountered.						
<100 mm carapace length:						
≥100 mm carapace length:						
d. Number of <u>wild, free-ranging</u> desert tortoises you personally handled (circle one for each size category).						
<100 mm: Zero	<10	10-50	50-100	100-200	>200	
≥100 mm: Zero	<10	10-50	50-100	100-200	>200	
e. Number of <u>captive</u> desert tortoises you personally handled (circle one for each size category).						
<100 mm: Zero	<10	10-50	50-100	100-200	>200	
≥100 mm: Zero	<10	10-50	50-100	100-200	>200	
f. Number of transmitters or other devices (specify) you personally attached to or removed from <u>wild, free-ranging</u> desert tortoises (circle one for each size category).						
<u>Attached:</u>						
<100 mm: Zero	<10	10-50	50-100	100-200	>200	
≥100 mm: Zero	<10	10-50	50-100	100-200	>200	
<u>Removed:</u>						
<100 mm: Zero	<10	10-50	50-100	100-200	>200	
≥100 mm: Zero	<10	10-50	50-100	100-200	>200	
g. Number of transmitters or other devices (specify) you personally attached to or removed from <u>other relevant species or captive</u> desert tortoises (circle one for each size category).						
<u>Specify species or if captive desert tortoises:</u>						
<u>Attached:</u>						
<100 mm: Zero	<10	10-50	50-100	100-200	>200	
≥100 mm: Zero	<10	10-50	50-100	100-200	>200	
<u>Removed:</u>						
<100 mm: Zero	<10	10-50	50-100	100-200	>200	
≥100 mm: Zero	<10	10-50	50-100	100-200	>200	
h. Number of blood samples that you personally collected from <u>wild, free-ranging</u> desert tortoises (circle one for each size category).						
<100 mm: Zero	<10	10-50	50-100	100-200	>200	
≥100 mm: Zero	<10	10-50	50-100	100-200	>200	

**Specific Desert Tortoise Field Experience Continued:**

- i. Number of blood samples that you personally collected from other relevant species or captive desert tortoises (circle one for each size category).

Specify species or if captive desert tortoises:

Specify type of procedure:

<100 mm: Zero	<10	10-50	50-100	100-200	>200
≥100 mm: Zero	<10	10-50	50-100	100-200	>200

- j. Experience conducting other procedures on wild, free-ranging desert tortoises (circle one for each size category).

Specify type of procedure:

<100 mm: Zero	<10	10-50	50-100	100-200	>200
≥100 mm: Zero	<10	10-50	50-100	100-200	>200

- k. Experience conducting other procedures on other relevant species or captive desert tortoises (circle one for each size category).

Specify species or if captive desert tortoises:

Specify type of procedure:

<100 mm: Zero	<10	10-50	50-100	100-200	>200
≥100 mm: Zero	<10	10-50	50-100	100-200	>200

- l. Prior authorizations for desert tortoise under Biological Opinions or Habitat Conservation Plans (specify number, date, project name and location). Do not reiterate "general field experience" information:

**10. Provide at least 3 references that can verify your field qualifications and skills:**

Name	Employer/Position	Address/Location	Phone Number	Email
1.				
2.				
3.				

I certify that the information submitted in this form is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. Ch.47, Sec. 1001.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment B**

**SECTION 7 FEE PAYMENT FORM**

Entire form is to be completed by project proponent

**Biological Opinion File Number:** 1-5-07-F-458

**Fish and Wildlife Service Office that Issued the Opinion:** Reno, Nevada

**Species:** Desert tortoise (*Gopherus agassizii*)

**Project:** Laughlin Regional Heritage Greenway Trail System

**Number of Acres Anticipated to be Disturbed:** \_\_\_\_\_

**Fee Rate (per acre):** \_\_\_\_\_

**Total Payment Required:** \_\_\_\_\_

**Amount of Payment Received:** \_\_\_\_\_

**Date of Receipt:** \_\_\_\_\_

**Check or Money Order Number:** \_\_\_\_\_

**Project Proponent:** \_\_\_\_\_

**Authorizing Agencies:** Bureau of Reclamation, Boulder City, Nevada

**Telephone Number:** \_\_\_\_\_

**Make checks payable to:** Clark County Treasurer

**Deliver check to:** Clark County Desert Conservation Program  
c/o Dept. of Air Quality and Environmental Management  
Clark County Government Center  
500 S. Grand Central Parkway, first floor (front counter)  
Las Vegas, Nevada 89106  
(702) 455-5821

If you have questions, you may call the Southern Nevada Field Office of the U.S. Fish and Wildlife Service at (702) 515-5230.



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

REPLY TO  
ATTENTION OF

April 24, 2009

Regulatory Division SPK-2007-0668-SG

Clark County Public Works  
Attn: Roy A. Davis III  
500 S. Grand Central Parkway  
P.O. Box 554000  
Las Vegas, Nevada 89155

Dear Mr. Davis:

We are responding to your April 24, 2007 request for a Department of the Army permit for the Laughlin Regional Heritage Greenway Trail project. This approximately 400 acre project is proposing to construct a system of trails, trailheads, and Day-Use and Equestrian-Use Areas that will provide increased recreational opportunities in the vicinity of the Colorado River and Laughlin. The project would include riparian and wetland enhancement and creation along the Colorado River by removing non-native vegetation, transplanting native riparian vegetation, creation of a wetlands lagoon, and improving flood conveyance. The project area is located on the U.S. Geological Survey Davis Dam 7.5 minute quadrangle map in Section 1 of Township 32 South, Range 66 East, Clark County, Nevada. The trails and associated amenities would be located primarily upon public lands located between Davis Dam and the town of Laughlin adjacent to the Colorado River.

Based on the information you provided the proposed activity in approximately 0.34 acres ephemeral washes and temporary impacts to 0.69 acres of wetlands and the restoration/enhancement of approximately 5.0 acres along the shoreline of the Colorado River qualifies for Nationwide Permit #27. Your work must comply with the general terms and conditions listed on the enclosed Nationwide Permit information sheets and the following **special conditions**:

- A. This Corps permit does not authorize you to take an endangered species, in particular Mojave Desert tortoise (*Gopherus agassizii*), Southwestern willow flycatcher (*Empidonax traillii extimus*), bonytail chub (*Gila elegans*), razorback sucker (*Xyrauchen texanus*) or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The enclosed Fish and Wildlife Service Biological Opinion (Number 1-5-07-F-458, dated May 7, 2007), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental

Exhibit E



take" of the attached Biological Opinion, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The Fish and Wildlife Service is the appropriate authority to determine compliance with the terms and conditions of its Biological Opinion, and with the Endangered Species Act. The permittee must comply with all conditions of this Biological Opinion, including those ascribed to the Corps.

- B. You must allow representatives from the Corps of Engineers to inspect the authorized activity and any mitigation, preservation, or avoidance areas at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
- C. To document pre- and post-project construction conditions, you shall submit pre-construction photos of the project site prior to project implementation and post-construction photos of the project site within 30 days after project completion.
- D. The facilities built under the authority of this permit shall not be converted to or used as a recreation room, residence, or temporary dwelling, nor shall it be used to moor a recreation room or floating residence.
- E. You shall design and construct all crossings of waters of the United States to retain a natural substrate and to accommodate all reasonably foreseeable wildlife passage and expected high flows.
- F. If a Section 401 Water Quality Certification is necessary, all terms and conditions of said permit are expressly incorporated as conditions of this permit.
- G. The permittee understands and agrees, that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused hereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- H. The "Habitat Mitigation and Monitoring Plan for Section 404/401 Permits" (April 2009) is incorporated by reference into this permit.

You must sign the enclosed Compliance Certification and return it to this office within 30 days after completion of the authorized work.

This verification is valid for two years from the date of this letter or until the Nationwide Permit is modified, reissued, or revoked, whichever comes first. Failure to comply with the General Conditions of this Nationwide Permit, or the project-specific Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

We appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing our customer survey at [http://www.spk.usace.army.mil/customer\\_survey.html](http://www.spk.usace.army.mil/customer_survey.html).

Please refer to identification number SPK-2007-00668-SG in any correspondence concerning this project. If you have any questions, please contact Patricia L. McQueary at our St. George Regulatory Office, 321 N Mall Drive, L-101, or email at [patricia.l.mcqueary@usace.army.mil](mailto:patricia.l.mcqueary@usace.army.mil), or telephone at 435-986-3979.

Sincerely,



Patricia L. McQueary  
Chief, St. George Regulatory Office

Enclosure(s)

NWP information sheets

Compliance Certification

Laughlin Town Manager, Attn: Deborah Murray, 101 Laughlin Civic Way, Laughlin, Nevada 89029

Jeff Herrick, VTN Nevada, 2727 S Rainbow Blvd., Las Vegas, Nevada 89146

Laureen Perry, Bureau of Reclamation, Lower Colorado Region, PO Box 61470, Boulder City, NV  
89006-1470

U.S. Fish and Wildlife Service, Nevada Fish & Wildlife Office, 1340 Financial Blvd., Suite 234  
Reno, Nevada 89502

U.S. Coast Guard, 2710 North Harbor Drive, San Diego, CA 92101

Nationwide Permit 27  
Aquatic Habitat Restoration, Establishment, and Enhancement Activities

Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services. To the extent that a U.S. Army Corps of Engineers (Corps) permit is required, activities authorized by this Nationwide Permit (NWP) include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services. Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and establishment activities conducted:

(1) In accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. Fish and Wildlife Service (USFWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), or their designated State cooperating agencies;

(2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining (OSM) or the applicable State agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within 5 years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The 5-year reversion limit does not apply to agreements without time limits reached between the landowner and the USFWS, NRCS, FSA, NMFS, NOS, or an appropriate State cooperating agency.

This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland that has not been abandoned or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, USFWS, or their designated State cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a Section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate State agency executing the agreement or permit. Before conducting any reversion activity, the permittee or the appropriate Federal or State agency must notify the District Engineer (DE) and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity result in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases, a separate permit would be required for any reversion.

Reporting: For those activities that do not require pre-construction notification (PCN), the permittee must submit to the DE a copy of:

(1) The binding wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map;

(2) the NRCS or USDA Technical Service Provider documentation for the voluntary wetland restoration, enhancement, or establishment action; or

(3) the SMCRA permit issued by OSM or the applicable State agency. These documents must be submitted to the DE at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

**Notification:** The permittee must submit a PCN to the DE prior to commencing the activity (see General Condition (GC) 27), except for the following activities:

- (1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the USFWS, NRCS, FSA, NMFS, NOS, or their designated State cooperating agencies;
- (2) Voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or
- (3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSM or the applicable State agency. However, the permittee must submit a copy of the appropriate documentation.

**Note:** This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee programs. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

This NWP is authorized pursuant to Section 404(e) of the Clean Water Act (CWA) (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq). The effective date for this NWP (33 CFR 330), GCs, and definitions is March 19, 2007, as published in the Federal Register. The NWP, GCs, and definitions expire on March 18, 2012.

#### General Conditions

##### 1. Navigation.

- a. No activity may cause more than a minimal adverse effect on navigation.
- b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- c. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and stormwater management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Flood Plains. The activity must comply with applicable Federal Emergency Management Agency (FEMA) approved State or local flood plain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety, and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, USFWS).

16. Tribal Rights. No activity or its operation may impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. Endangered Species.

a. No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

b. Federal permittees should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the DE with the appropriate documentation to demonstrate compliance with those requirements.

c. Non-Federal permittees shall notify the DE if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the PCN must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The DE will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps determination within 45 days of receipt of a complete PCN. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

d. As a result of formal or informal consultation with the USFWS, the DE may add species-specific regional endangered species conditions to the NWPs.

e. Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties.

a. In cases where the DE determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

b. Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the NHPA. Federal permittees must provide the DE with the appropriate documentation to demonstrate compliance with those requirements.

c. Non-Federal permittees must submit a PCN to the DE if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the PCN must state which historic properties

may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of

historic resources can be sought from the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The DE shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the DE shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified

the Corps, the non-Federal applicant shall not begin the activity until notified by the DE either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

d. The DE will notify the prospective permittee within 45 days of receipt of a complete PCN whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA Section 106 consultation is required and will occur, the DE will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

e. Prospective permittees should be aware that Section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally, significantly, or adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on Tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. Designated CRW. The CRW include State natural heritage sites, and outstanding National resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the DE after notice and opportunity for public comment. The DE may also designate additional CRW after notice and opportunity for comment.

a. Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, CRW, including wetlands adjacent to such waters.

b. For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with GC 27, for any activity proposed in the designated CRW including wetlands adjacent to those waters. The DE may authorize activities under these NWPs only after it is determined that the impacts to the GC will be no more than minimal.

20. Mitigation. The DE will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

a. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require PCN, unless the DE determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require PCN, the DE may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

d. For losses of streams or other open waters that require PCN, the DE may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

e. Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

f. Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In

some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the DE may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the DE will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the DE may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

g. Permittees may propose the use of mitigation banks, in-lieu fee arrangements, or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

h. Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 WQC must be obtained or waived (see 33 CFR 330.4(c)). The DE or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality. Any issued 401 WQC is attached.

22. Coastal Zone Management. In coastal States where an NWP has not previously received a State coastal zone management consistency concurrence, an individual State coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The DE or a State may require additional measures to ensure that the authorized activity is consistent with State coastal zone management requirements.

23. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State, Indian Tribe, or EPA in its Section 401 WQC, or by the State in its Coastal Zone Management Act consistency determination.

24. Use of Multiple NWPs. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3 acre.

25. Transfer of NWP Verifications. If the permittee sells the property associated with a NWP verification, the permittee may transfer the NWP verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the NWP verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this NWP are still in existence at the time the property is transferred, the terms and conditions of this NWP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this NWP and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

26. Compliance Certification. Each permittee who received NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded to the Corps with the NWP verification letter and will include:

- a. A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- b. A statement that any required mitigation was completed in accordance with the permit conditions; and
- c. The signature of the permittee certifying the completion of the work and mitigation.

27. PCN.

a. Timing. Where required by the terms of the NWP, the prospective permittee must notify the DE by submitting a PCN as early as possible. The DE must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the DE will notify the prospective permittee that the PCN is still

incomplete and the PCN review process will not commence until all of the requested information has been received by the DE.

The prospective permittee shall not begin the activity:

(1) Until notified in writing by the DE that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) If 45 calendar days have passed from the DE's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to GC 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to GC 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the ESA (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the DE issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

b. Contents of PCN: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the DE to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided, results in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site.

Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the ESA; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the NHPA.

c. Form of PCN: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this GC. A letter containing the required information may also be used.

d. Agency Coordination:

(1) The DE will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring PCN and for other NWP activities requiring PCN to the DE that result in the loss of greater than 1/2 acre of waters of the United States, the DE will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or State offices (USFWS, State natural resource or water quality agency, EPA, SHPO, THPO, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the DE notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the DE will wait an additional 15 calendar days before making a decision on the PCN. The DE will fully consider agency comments received within the specified time



frame, but will provide no response to the resource agency, except as provided below. The DE will indicate in the administrative record associated with each PCN that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The DE will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the DE will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of PCNs to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the DE will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

**e. DE's Decision:** In reviewing the PCN for the proposed activity, the DE will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The DE will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the DE determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the DE will notify the permittee and include any conditions the DE deems necessary. The DE must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the DE will expeditiously review the proposed compensatory mitigation plan. The DE must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the DE to be minimal, the DE will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the DE determines that the adverse effects of the proposed work are more than minimal, then the DE will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the DE determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the DE has approved a specific mitigation plan.

**28. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

#### Further Information

1. The DEs have authority to determine if an activity complies with the terms and conditions of a NWP.
2. The NWPs do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law.
3. The NWPs do not grant any property rights or exclusive privileges.
4. The NWPs do not authorize any injury to the property or rights of others.
5. The NWPs do not authorize interference with any existing or proposed Federal project.

Contract No. 06-07-30-L0614  
Amendment No. 1

The following Section 10 is hereby added to the Reclamation Recreation Purpose License (Contract No. 06-07-30-L0614), on November 5, 2010:

Explanatory Recitals

- a. WHEREAS, by Contract dated March 30, 1942, as amended, between the United States and the State of Nevada the United States, among other things, agreed, subject to the provisions of said 1942 Contract, as amended, to deliver for use in Nevada so much water as may be necessary to supply the State a total quantity not to exceed the State's 300,000 acre-foot per year apportionment;
- b. WHEREAS, the Bureau of Reclamation reserved a diversion entitlement for up to 300 acre-feet of Colorado River water per year for use on Federally owned facilities and lands in the State of Nevada for domestic use;
- c. WHEREAS, Reclamation entered into a Recreation Purpose License (Contract No. 06-07-30-L0614) to allow Clark County to use a portion of Federally owned Reclamation lands within the State of Nevada;
- d. WHEREAS, Clark County requested the diversion of up to 50 acre-feet per year of Reclamation's entitlement for domestic use on Federally owned Reclamation lands located in the State of Nevada; and
- e. WHEREAS, the Parties desire to amend Contract No. 06-07-30-L0614 to include a section on Colorado River water.

Sec. 10: *Colorado River Water.*

- (a) For the duration of this Reclamation Recreation Purpose License (Contract No. 06-07-30-L0614), hereinafter called "Contract", the United States will deliver and the

Licensee is permitted to divert at a diversion point or point(s) indicated but not limited to the locations along Federal lands shown in Exhibit A agreed to in writing by Reclamation, up to 50 acre-feet per year of Mainstream Water pursuant to the Notice of Reservation of Colorado River Water for Use On Federally Owned Facilities and Lands in the State of Nevada that was signed by the Secretary of the Interior on November 9, 1998. Mainstream Water means the water of the Colorado River within the United States downstream of Lee Ferry, including reservoirs thereon, and the water withdrawn from the Colorado River aquifer which originated from the Colorado River or would be replaced by water from the Colorado River upon withdrawal, as determined by Reclamation.

(b) The Mainstream Water will be diverted for domestic use on the Federal lands shown in Exhibit A attached hereto. Domestic use shall mean the use of water for household, stock, municipal, mining, milling, industrial (including electrical power generation), and other like purposes, but shall exclude the generation of hydroelectric power. The Licensee shall divert or permit the diversion of Mainstream Water at the points of diversion and/or well sites agreed to by Reclamation and shall perform all acts required by law or custom in order to maintain control over the diversions and to secure and maintain lawful use and proper diversion of Mainstream Water.

(c) The Licensee shall install and maintain in a manner satisfactory to Reclamation all wells, turnouts, gates, checks, pumps, pipelines, equipment, meters and appurtenances of whatever nature necessary to divert, pump, and transport the Mainstream Water diverted for domestic use on the Federal lands shown in Exhibit A.

(d) All Mainstream Water diverted by the Licensee shall be measured by the Licensee at the points of diversion and/or well sites by measuring devices approved by Reclamation. If for any reason the measuring devices shall, in the opinion of Reclamation, fail to operate satisfactorily, Reclamation will determine from the best information available the amount of Mainstream Water diverted at the points of diversion and/or well sites. Reclamation may inspect the measuring devices to determine the accuracy and the condition of the measuring devices. In the event Reclamation finds the measuring devices to be defective or inaccurate, the Licensee shall, upon notification by Reclamation, make any and all necessary repairs or replacement within sixty (60) days after notification. Reclamation may, if after written notice and providing Licensee with an opportunity to cure, cause the repairs to be made and the cost thereof shall be paid by the Licensee within thirty (30) days following receipt of a bill for collection.

(e) The Licensee shall provide Reclamation with an annual written schedule on or before September 1<sup>st</sup> for the following year for the amount of Mainstream Water to be diverted for use on the Federal lands in Exhibit A which shall not exceed 50 acre-feet per year. The Licensee shall maintain a monthly record of Mainstream Water at each point of diversion for the preceding month. On or before January 20<sup>th</sup>, the Licensee shall submit to Reclamation a complete written report showing the amount of Mainstream Water diverted at each point of diversion, unless otherwise determined by Reclamation. Such schedule and report shall be sent to the Boulder Canyon Operations Office, Attention: 4200, P.O. Box 61470, Boulder City, Nevada 89006-1470.

(f) This Contract permits the Licensee to divert Mainstream Water up to 50 acre-feet per year. The Licensee is not obligated to deliver return flow water pursuant to this Contract. Further, any return flow water delivered to a point of return does not permit the Licensee to make additional diversion of Mainstream Water. At such time the Licensee begins collecting return flow water, the Licensee shall maintain a monthly record of return flow water delivered at each point of return and furnish Reclamation with an annual report broken down by month of the volume of return flow water delivered at each point of return during the previous year, on or before January 20<sup>th</sup>, to be sent to the above address, unless otherwise directed by Reclamation. All return flow water that is collected shall be measured by the Licensee at the points of return by measuring devices approved by Reclamation. Unmeasured return flow water, if any, shall be determined and calculated by Reclamation. Both measured and unmeasured return flow water, if any, shall inure to the benefit of the State of Nevada. The Licensee shall comply with all applicable Federal and State of Nevada water quality laws, regulation, codes, and standards and shall obtain all required discharge permits from appropriate Federal and State of Nevada agencies and shall operate and maintain suitable water treatment and discharge facilities to achieve full compliance with such permits.

(g) The diversion, measurement, and use of Mainstream Water by the Licensee shall be at no expense to Reclamation. The United States does not warrant the quality of Mainstream Water diverted by the Licensee and is under no obligation to construct or furnish water treatment facilities to maintain or improve the quality of Mainstream Water, except as otherwise provided in relevant Federal public laws.

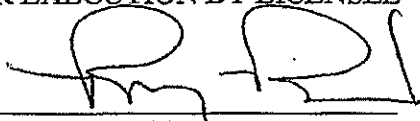
(h) The obligation of the United States to deliver Mainstream Water under this Contract is subject to the availability of Colorado River water for use in the State of Nevada pursuant to the provision of the Colorado River Compact dated November 24, 1922, the Boulder Canyon Project Act enacted December 21, 1928, the contract dated March 30, 1942, as amended, between the United States and the State of Nevada (1942 Contract), the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona v. California, et al.*, entered March 27, 2006, and the treaty between the United States and the United Mexican States, signed at Washington, D.C., on February 3, 1944.

(i) The Licensee understands and agrees that the permit under this Contract to divert up to 50 acre-feet of Mainstream Water is subject to the condition that Hoover Dam and Lake Mead will be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic use and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact, and third, for power.

(j) In times of shortage, the quantity of Mainstream Water available for delivery under this Contract will be accorded equal priority with other holders in the seventh priority category within the State of Nevada, as provided in the Notice of Reservation of Colorado River Water for Use On Federally Owned Facilities and Lands in the State of Nevada that was signed by the Secretary of the Interior on November 9, 1998.

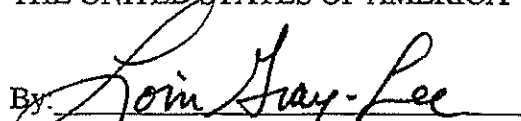
IN WITNESS WHEREOF, the parties have executed this Contract No. 06-07-30-L0614, Amendment No. 1, the day and year first above written.

FOR EXECUTION BY LICENSEE

By:   
Rory Reid


Title: Chairman, Board of County  
Commissioners

THE UNITED STATES OF AMERICA

By:   
Lorri Gray-Lee

Title: Regional Director  
Bureau of Reclamation

Approved as to Form:

By:   
Mary Ann Peterson  
Deputy District Attorney  
Civil Division

Approved as for Legal Sufficiency:

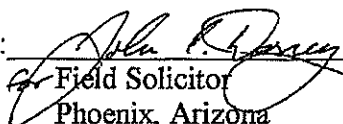
By:   
John P. Drury  
Field Solicitor  
Phoenix, Arizona

Exhibit D  
Agreement No. 15-XX-30-W0581  
Davis Dam

**SECRETARIAL RESERVATION OF COLORADO RIVER WATER FOR DAVIS DAM  
AND ITS FACILITIES**

1. A copy of Reclamation's Secretarial Reservation dated November 29, 2000, for up to 100 acre-feet of Colorado River water for use at Davis Dam and its facilities is attached.

4310-MN-P

## DEPARTMENT OF THE INTERIOR

## OFFICE OF THE SECRETARY

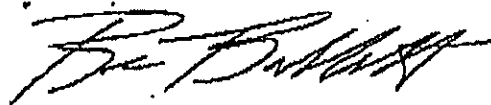
NOTICE OF RESERVATION OF COLORADO RIVER WATER FOR  
USE IN THE STATE OF ARIZONA  
AT DAVIS DAM AND ITS FACILITIES

Pursuant to the authority contained in the Boulder Canyon Project Act, dated December 21, 1928 (45 Stat. 1057), as amended; and consistent with the Supreme Court Opinion of June 3, 1963 (373 U.S. 546); the Supreme Court Decree of March 9, 1964, in Arizona v. California et al. (376 U.S. 340), as supplemented; and the February 9, 1944, contract between the United States and the State of Arizona, notice is given that there is hereby reserved to the United States out of the waters of the Colorado River the annual diversion of up to 100 acre-feet of Colorado River water as a part of the State of Arizona's second-priority category with a priority date of April 26, 1941, to be used in the State of Arizona at Davis Dam and its facilities. The use of the water is for domestic purposes, such as drinking fountains, landscaping, restrooms, and other related domestic uses.

The aforesaid reservation of water is subject to:

- (a) The provisions of the Colorado River Compact signed in Santa Fe, New Mexico, November 24, 1922;
- (b) The provisions of the Boulder Canyon Project Act of December 21, 1928 (5 Stat. 1057), as amended;
- (c) The provisions of the Supreme Court Opinion, dated June 3, 1963 (373 U.S. 546), and the Supreme Court Decree of March 9, 1964, in Arizona v. California et al. (376 U.S. 340), as supplemented on January 9, 1979 (439 U.S. 419) and April 16, 1984 (466 U.S. 144); and
- (d) The provisions of the Mexican Water Treaty, signed in Washington D.C., February 3, 1944, and Minute 242 of the International Boundary and Water Commission, United States and Mexico, dated August 30, 1973.

For further information, you may contact Mr. Steven C. Hvinden, Water Administration Manager, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006, at (702) 293-8536.



Secretary of the Interior

NOV 29 2000

Date



**BIG BEND WATER DISTRICT  
BOARD OF TRUSTEES  
AGENDA ITEM**

December 4, 2018

<b>Subject:</b> Right-of-Entry Authorization	<b>Director's Backup</b>
<b>Petitioner:</b> David L. Johnson, Deputy General Manager, Engineering/Operations	
<b>Recommendations:</b> That the Board of Trustees approve and authorize the General Manager to sign a right-of-entry authorization between the State of Nevada and the District to allow for temporary water discharge into the Colorado River.	

**Fiscal Impact:**

None by approval of the above recommendation.

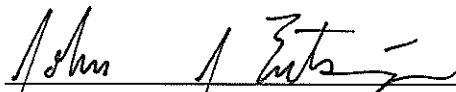
**Background:**

The Bureau of Reclamation (Bureau) is providing grant funding and easements for the construction, operation and maintenance of a high-capacity riverbank filtration (RBF) well and related pipelines by the District. After the RBF well has been drilled, hydraulic testing that requires discharge of water into the Colorado River for a period of three to five days will be performed. The temporary discharge pipe will need to rest on the bed and the bank of the Colorado River, which is owned by the State of Nevada.

If approved, the attached State of Nevada Right-of-Entry Authorization, Colorado River, Big Bend Water District Filtration Well would allow the District the temporary placement of the discharge pipeline, located as shown on Attachment A, during the testing period.

This action is authorized pursuant to NRS 322.100. The office of the General Counsel has reviewed and approved this agreement.

Respectfully submitted:

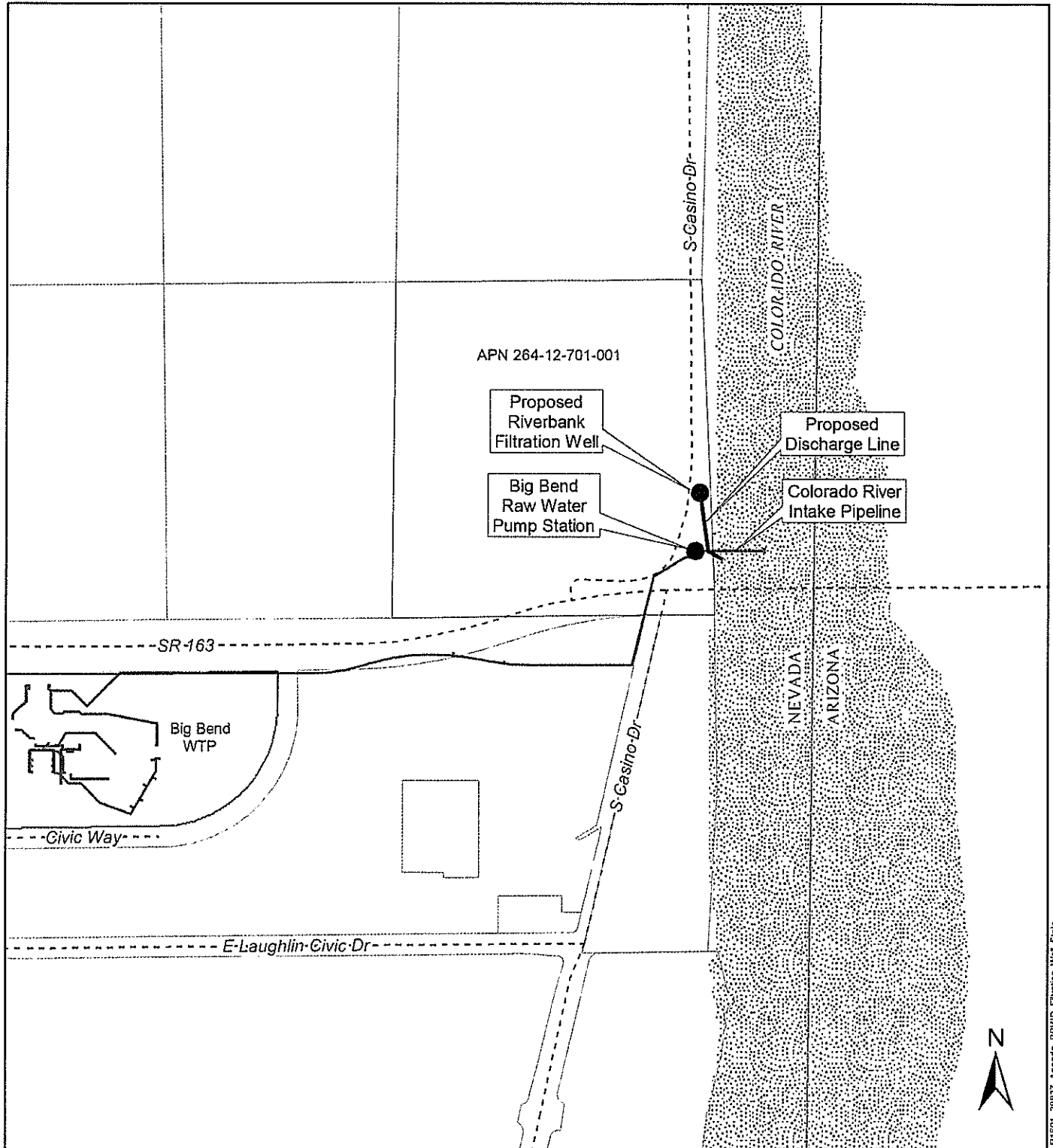
  
John J. Entsminger, General Manager  
JJE:DLJ:CNP:AB:JPP:MR:lmv  
Attachments

AGENDA ITEM #
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4

BOARD OF TRUSTEES  
AGENDA ITEM  
December 4, 2018

STATE OF NEVADA  
RIGHT-OF-ENTRY AUTHORIZATION  
COLORADO RIVER  
BIG BEND WATER DISTRICT FILTRATION WELL



R1801\_30937\_Agenda\_BBWD\_Filtration\_Well\_State



CL-326612-3, DBH  
Interest: 15455  
Project: 6233  
Contract: 4867  
County: Clark County  
COLORADO RIVER

DIVISION OF STATE LANDS  
901 S. STEWART STREET, SUITE 5003  
CARSON CITY, NV 89701-5246

## **RIGHT-OF-ENTRY AUTHORIZATION**

### **COLORADO RIVER**

#### **BIG BEND WATER DISTRICT FILTRATION WELL**

This Authorization is issued this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between the STATE OF NEVADA, acting through the DIVISION OF STATE LANDS and the STATE LAND REGISTRAR, hereinafter referred to as GRANTOR, and LAS VEGAS VALLEY WATER DISTRICT who operates and maintains BIG BEND WATER DISTRICT, a political subdivision of the State of Nevada, hereinafter referred to as GRANTEE:

**WHEREAS**, NRS 537.010 declared the Colorado River to be a navigable stream and title to the lands below the high water mark is held by the State of Nevada; and

**WHEREAS**, the GRANTOR AND GRANTEE, entered into an Easement and Right-of-Way, dated October 4, 1991, for the permanent installation of a water intake pipeline and intake manifold below the ordinary and permanent historical high water mark of the Colorado River with the right to construct, place, inspect, maintain, and remove said pipeline and appurtenances; and

**WHEREAS**, said Easement and Right-of-Way Grant was amended as a result of a rental fee review, dated May 18, 2012; and

**WHEREAS**, GRANTEE, has made application to and wishes to obtain from the GRANTOR an Authorization to enter onto state land, for the purpose of drilling and constructing a filtration well, temporarily (for a period of 3-5 days) discharging water from the well into the river, by resting the discharge line on the bed and bank of the Colorado River so that it may be submerged in the river and to mark the discharge line with a buoy to warn boaters and other river users of the submerged pipeline. These activities are located adjacent to the existing Easement and Right-of-Way referenced above; and

**WHEREAS**, NRS 322.100 gives the State Land Registrar the authority to issue a permit, license, or other authorization for any lawful use of state land administered by the Division of State Lands;

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, GRANTOR does hereby authorize GRANTEE the privilege to enter upon the bed and banks of the Colorado River owned by the State of Nevada for the purposes stated above, hereinafter referred to as "the Project." The location of the Project is described in the legal description attached hereto as **EXHIBIT A** and by reference made a part hereof. The following described property situate in Section 12, Township 32 South, Range 66 East, as shown on **EXHIBIT B** attached hereto and by reference made a part hereof.

**IN FURTHER CONSIDERATION** for issuing this Authorization, GRANTEE and/or its agent(s) and contractor(s) understands and agrees to the following specific conditions:

1. **PURPOSE:** The property described herein may be used by GRANTEE solely for the Project. The Project shall be executed in accordance with the Big Bend Water District Well Filtration Project located at the Big Bend Raw Water Pump Station in Laughlin, Nevada – Clark County Assessor Parcel Number 264-12-790-001, as submitted with the application and received by this office on June 17, 2018, incorporated herein and by reference made a part hereof and shall not interfere with the navigability of Colorado River.

2. **JURISDICTION OF STATE:** The Authorization for the Project extends only to the bed and banks of the Colorado River, to the ordinary and permanent high water mark and only to the areas described in **EXHIBITS A and B**, and shall not be construed to authorize access across private lands; access to the river shall be by established public routes and/or authorized access across private lands. If GRANTEE needs to utilize other portions of the property not granted to it through this Authorization, a permit, license, easement or other authorization to do so is required.

3. **COLORADO RIVER BOUNDARY:** The parties acknowledge that in some places the Colorado River may have been moved from its original channel by previous projects of the Army Corps of Engineers. For purposes of this Authorization no attempt has been made to determine whether the sections of the channel included in the Project are in their original location. Artificial changes to a river's boundary are generally viewed as avulsive in nature by many courts, including the Nevada Supreme Court. Thus, it is possible that the State's title to the bed and banks of the Colorado River did not move with the river during the Army Corps of Engineer's channelization project, thus, the current ordinary high water mark of the Colorado River in the Authorization area may not coincide with the true ordinary high water mark owned

by the State. In other words, the State may not have title to all of the bed and banks of the precise area subject to this Authorization. The GRANTEE expressly releases any and all claims, known or unknown, against the GRANTOR and State of Nevada arising from any dispute regarding the title to the bed and banks of the area subject to this Authorization. The parties understand and agree that, if this Project alters any portion of the channel by filling, thereby causing that portion of state land to have a higher elevation than the present ordinary and permanent high water mark, this does not modify State ownership of the bed and banks of the Colorado River as it was previous to this Project.

4. **CONSIDERATION:** Pursuant to NRS 322.140(2)(b) the State Land Registrar has waived the fee for the issuance of this Authorization since the Project is for a short-term use and is conducted in such a manner as to cause no essential change in or damage to the State's land.

5. **TERM:** This Authorization will become effective when a fully executed and notarized copy is returned to the GRANTOR along with the insurance documents as required herein. Unless terminated sooner by another provision, this Authorization shall terminate on AUGUST 31, 2019.

6. **PERMITS:** This Authorization is subject to the acquisition of all local, regional, state and federal permits and approvals as required by law. GRANTEE agrees to obtain and adhere to the conditions of the necessary permits.

7. **INDEMNIFICATION:** a.) To the fullest extent of limited liability as set forth in this Right of Entry Authorization, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs

arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. b.) The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying party within 30 days of the indemnified party's actual notice of any actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless and attorneys' fees and costs for the indemnified party's chosen right to participate with legal counsel.

8. **NO WAIVER OF LIABILITY:** Neither GRANTOR/GRANTEE shall be liable to indemnity claims in excess of \$100,000 per claim nor will either party waive and intends to assert all available immunities and statutory limitations in all cases, including, without limitation, the provisions of Nevada Revised Statutes Chapter 41.

9. **INSURANCE; CONTRACTORS AND SUB-CONTRACTORS:** This provision is applicable to all Non-Governmental Entities engaged to work on the premises granted by this Authorization and does not apply to any GRANTEE considered a Public Entity. GRANTEE agrees to carry and to require their contractors and sub-contractors to carry their own General Liability Insurance Policy issued by an insurance company authorized to do business in the State of Nevada and which is currently rated by A. M. Best as A-VII or better. The insurance policy is to be kept in full force and effect during the term of this Authorization. Such insurance policy shall be at the minimum, in the amount of \$1,000,000 per occurrence for bodily injury and property damage and shall via an endorsement, name the *State of Nevada, its officers, employees and agents as additional insureds* for all liability arising from the use of state land. Each liability insurance policy shall also provide for a waiver of subrogation as to all additional insured's. GRANTEE agrees to provide and to require their contractors and sub-contractors to provide to the State of Nevada the

Accord 25 Certificate of Insurance as proof of the insurance and an Additional Insured Endorsement, signed by an authorized insurance company representative, to evidence the endorsement of the State as additional insured. **The Certificate of Insurance and Additional Insured Endorsement shall be provided by each contractor and sub-contractor prior to their entry upon state property and be sent to:**

**Dawnne Hirt, Land Agent I  
Nevada Division of State Lands  
901 S. Stewart Street, Suite 5003  
Carson City, Nevada 89701**

**10. PLANS AND PHOTOGRAPHS:** The Project and related activities must be completed in accordance with the submitted application and plans, if any, on file in the office of the Division of State Lands. The Division of State Lands must be notified if any alterations to the Project which would substantially affect the land are made or proposed prior to commencement of or during any work on the Project and related activities. The Division of State Lands reserves the right to prohibit said alterations. GRANTEE agrees to provide the GRANTOR with a set of before and after construction photographs of the Project.

**11. INSPECTION:** GRANTOR retains the right to inspect the Project at any time. GRANTEE agrees to notify GRANTOR at least **TWO (2)** business days prior to the commencement and termination of any activities on the property to allow interested agencies the opportunity to inspect the Project.

**12. EXISTING EASEMENTS:** GRANTEE and/or its agent(s) or contractor(s) understands and agrees to require contractors to use caution when constructing and placing the Project and supporting equipment because of the possibility of additional utility laterals not known,



and to be responsible for damage caused to any other utilities located upon state land. The legally required offsets from any existing gas, electric, water and/or communication lines shall be maintained at all times.

**13. HISTORIC DISCOVERIES:** If prehistoric or historic remains or artifacts are discovered during the term of this Authorization, work will be temporarily halted and the State Historic Preservation Office at (775) 684-3448 as well as the Division of State Lands at (775) 684-2720 shall be notified. GRANTEE will heed to the responsibilities required under Section 106 of the National Historic Preservation Act of 1966, as amended.

**14. DAMAGE TO STATE LAND:** GRANTEE and/or its agent(s) or contractor(s) understands and agrees to pay for and be responsible for all direct or indirect damages to the real property, improvements, and personal property of GRANTOR caused by GRANTEE during the term of the Authorization, and further agrees to return the land to its pre-project condition upon completion of the work.

**15. MAINTENANCE:** GRANTEE shall be responsible for all maintenance of the Project within the authorized area and understands and agrees that the Project must be maintained in good repair at all times.

**16. ENVIRONMENTAL CONDITIONS:** GRANTEE its agent(s) and/or contractor(s) understands and agrees to construct and maintain the Project within the Nevada Division of Environmental Protection's Best Management Practices guidelines. At no time shall any chemical products, petrochemicals, excavated materials, silt, floating debris or foreign debris of any kind be discharged, deposited or allowed to enter into any storm drain or any river channel. Any tractor, drill rig, backhoe, or other equipment utilized on upland banks adjacent to the

Project will be washed and free of any oils, toxins, fuel, and any other foreign substance that could pollute the Colorado River and harm its ecosystem. If any component of the Project fails, creates a hazard or causes upstream or downstream impacts, the GRANTEE agrees to repair or mitigate any damage.

**17. WARRANTIES:** GRANTOR makes no warranty as to the condition of or the adequacy of the property for the proposed uses of GRANTEE.

**18. NOTICES:** All notices under this Authorization shall be in writing and delivered in person or sent by certified mail, return receipt requested, to GRANTOR and to GRANTEE at their respective addresses set forth below or to such other address as may hereafter be designated by either party in writing:

**GRANTOR'S ADDRESS:**

Division of State Lands  
901 S. Stewart St., Ste. 5003  
Carson City, Nevada 89701

**GRANTEE'S ADDRESS:**

Big Bend Water District  
P.O. Box 99956, MS 95  
Las Vegas, Nevada 89193-9956

**19. FURTHER AUTHORIZATIONS:** Further authorization from the Division of State Lands is required prior to commencement of any future work or activities at locations other than that described in **EXHIBITS A & B**.

**20. COMPLIANCE TO CONDITIONS:** Failure to concur with or comply with any of the conditions contained herein will cause this Authorization to become invalid and shall require the termination and, if applicable, removal of the Project and appurtenances. GRANTEE agrees to provide a copy of this Authorization to its contractors prior to entering and beginning any work on the property described herein.

21. **WAIVER:** The failure of GRANTOR to insist upon strict performance of any of the covenants and agreements to this Authorization or to exercise any option herein conferred in anyone or more instance, shall not be construed to be a waiver or relinquishment of any such covenants and agreements.

22. **SURVIVAL:** This Authorization, and all of the terms hereof, shall inure to the benefit of, and be binding upon the parties hereto, and the rights and obligations of the GRANTEE are, and shall continue to be, joint and several.

23. **ENTIRE AGREEMENT:** This Authorization and conditions incorporated herein contain all of the agreements between the parties with respect to the matters contained herein. No prior agreement, understanding or verbal statement made by any party is a part hereof. No provisions of this Authorization may be amended or modified in any manner whatsoever unless incorporated in writing and executed by both parties. When executed by the GRANTOR and GRANTEE, this Authorization shall be binding upon GRANTOR and GRANTEE.

24. **SEVERABILITY:** If any term or provision of this Authorization, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Authorization or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby, and each term and provision of this Authorization shall be valid and shall be enforced to the fullest extent permitted by law.

25. **GOVERNING LAW:** This Authorization shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

**26. VENUE:** Any lawsuit brought to resolve a dispute arising from this Authorization must be brought either in the location of the Project or in Carson City, Nevada.

All covenants and agreements herein contained shall extend to and be a binding contract as the case may be of the respective parties. Authorization given by the Division of State Lands does not give any property rights either in real estate or material nor does it obviate the necessity of obtaining other local, regional, or federal assent to the work authorized. This Authorization may not be assigned.

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Page 11 of 11  
**COLORADO RIVER**  
**BIG BEND WATER DISTRICT FILTRATION WELL**

**'EXHIBIT A'**

A description of real property being a portion of the south half of Section 12, Township 32 South, Range 66 East, Mount Diablo Meridian, Clark County, Nevada, being more particularly described as follows:

Commencing at the Southwest corner of Government Lot 33 as shown on Supplemental Plat of Section 12 dated February 7, 1984; Thence North 89°21'23" East along the South line of said Government Lot 33 and the Easterly prolongation thereof, a distance of 1057.22 feet to the centerline intersection of Casino Drive; Thence North 50°31'23" East, a distance of 318.95 feet to a point on the Northerly line of that certain LAUGHLIN BRIDGE Easement described in Book 19861124, Instrument 00750 on file in the office of the Recorder, Clark County Nevada said point is also the **Point of Beginning (P.O.B.)**; Thence North 00°38'38" West, a distance of 20.00 feet; Thence South 89°21'22" West, a distance of 23.27 feet more or less to the 510 Mean Sea Level contour on the Westerly bank of the Colorado River as described in that certain Easement recorded in Book 19861124, Instrument 00750 on file in the office of the aforementioned Recorder; Thence South 09°55'16" East along said 510 contour line and Westerly Bank, a distance of 20.27 feet more or less to the aforementioned Northerly line; Thence North 89°21'22" East, along said Northerly line, a distance of 20.00 feet to the **Point of Beginning (P.O.B.)**.

The lands described herein contain 432 square feet, more or less.

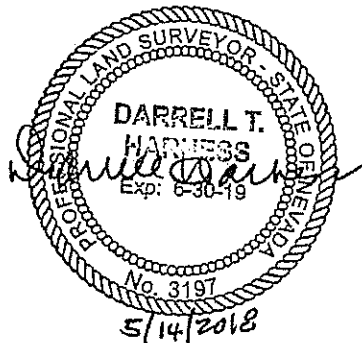
**Basis of Bearings:**

The basis of Bearings for this survey is North 89°21'23" East being the South line of said Government Lot 33. Said line is also shown as North 89°53'50" East on Record of Survey File 52, Page 92 on file in the office of the Recorder, Clark County, Nevada.

**References:**

- 1) "REFERENCE MAP" 18R8228016 LAUGHLIN RAW WATER DISCHARGE EASEMENT AREA DESCRIPTION DIAGRAM attached hereto and made a part hereof
- 2) Book 19861124, Instrument 00750
- 3) Record of Survey File 52, Page 92
- 4) Record of Survey File 18, Page 28
- 5) Supplemental Plat of Section 12 Township 32 South, Range 66 East

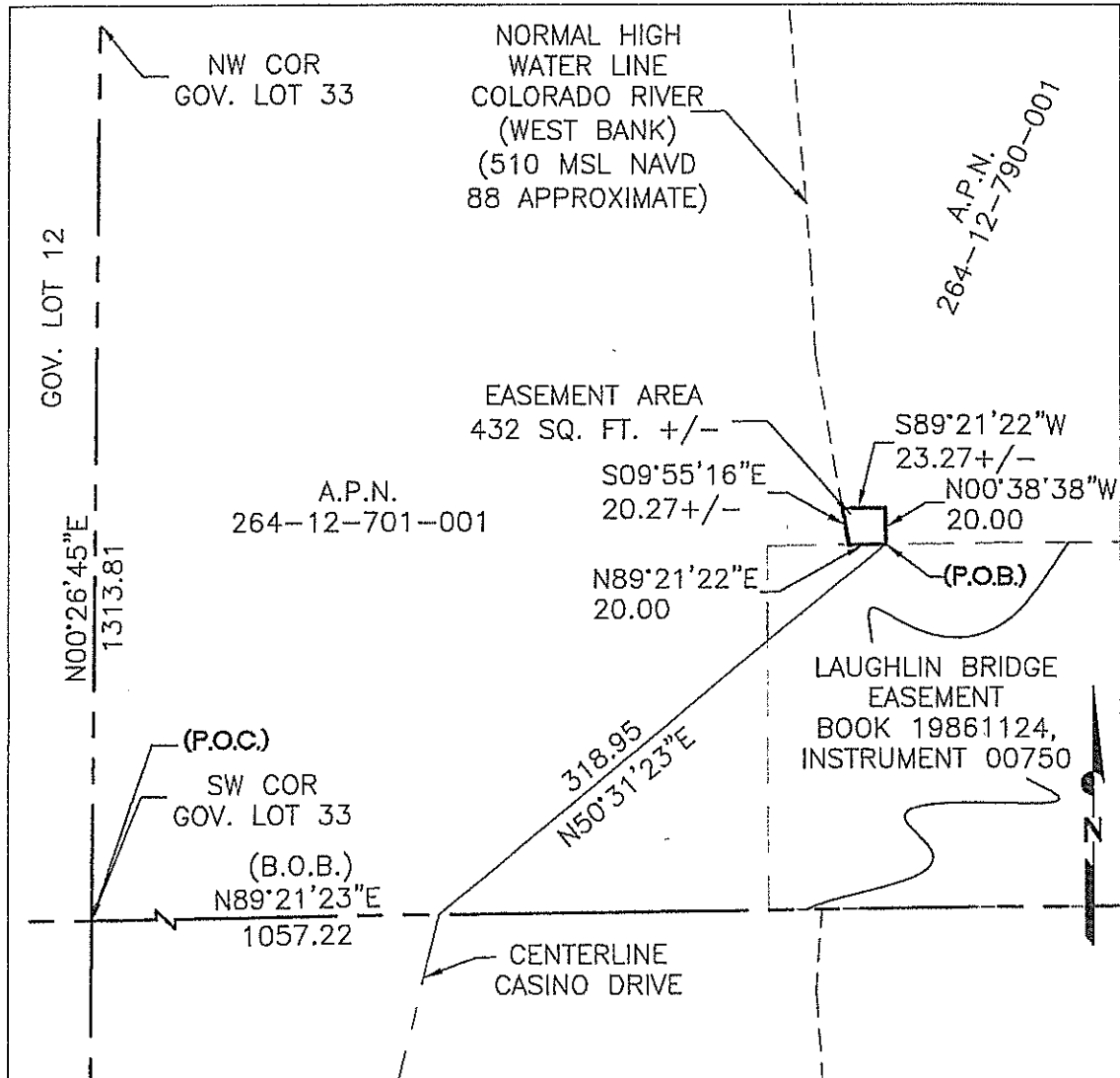
Darrell T. Harness P.L.S.  
Professional Land Surveyor  
Nevada License No. 3197  
Principal Land Surveyor, LVVWD



DTH/jlw  
G:\PROJECTS\CONTRACT JOBS (DESIGN)\18R8228016\WORKING FILES\WORD\18R8228016  
LAUGHLIN RAW WATER DISCHARGE.DOC

APN: 264-12-790-001

# "REFERENCE MAP" PT., SECTION 12, T.32 S., R.66 E., M.D.M.



## LEGEND

---	SECTION LINES	(B.O.B.)	BASIS OF BEARINGS
---	CENTERLINE	(P.O.C.)	POINT OF COMMENCEMENT
---	TIE LINES	---	EASEMENT AREA
---	BRIDGE EASEMENT	---	510 EL. (NAVD 88 APPROX)

## LAS VEGAS VALLEY WATER DISTRICT SURVEY DRAWING

<p>SCALE</p> <p>1" = 100'</p>	<p>DRAWN BY: JLW 05/14/18</p> <p>EDITED BY: JLW 05/14/18</p> <p>PLS: DTH 05/14/18</p>	<p>18R8228016</p> <p>LAUGHLIN RAW WATER DISCHARGE</p> <p>EASEMENT AREA DESCRIPTION DIAGRAM</p>	<p>LWWD</p> <p>EX-B</p> <p>PAGE 2 OF 2</p>
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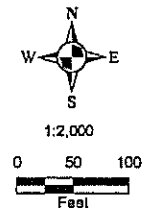
# EXHIBIT B - Colorado River, Big Bend Water District Filtration Well



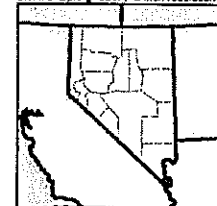
## Legend

- |  |  |  |
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|  |  |  |
|  |  |  |

\*Approximate acreage and dimensions.



Grid based on STP projection, NAD 1983, NV East FIPS 2701 US Flat Image, SNWA, Spring 2017, 3-inch resolution.



30642-R1601 4/4/2018 BP



**BIG BEND WATER DISTRICT  
BOARD OF TRUSTEES  
AGENDA ITEM**

December 4, 2018

<b>Subject:</b> Agreement	<b>Director's Backup</b>
<b>Petitioner:</b> Kevin Bethel, Chief Financial Officer	
<b>Recommendations:</b> That the Board of Trustees approve a loan contract between the State of Nevada Division of Environmental Protection and the District to accept a Drinking Water State Revolving Fund principal forgiveness loan, in an amount not to exceed \$500,000, to support the construction of a riverbank filtration well.	

**Fiscal Impact:**

The State of Nevada Division of Environmental Protection (NDEP) will reimburse the District up to \$500,000 in loan funds for which 100% of the principal will be forgiven. The loan does not require payback, interest, or a match.

**Background:**

The Safe Drinking Water Act was amended in 1996, authorizing the Drinking Water State Revolving Fund (DWSRF) program to address the most pressing health needs related to drinking water. The DWSRF helps states undertake activities to support their drinking-water programs. The federal government annually provides money for states to loan at below-market interest rates for qualifying improvements to drinking water system infrastructure.

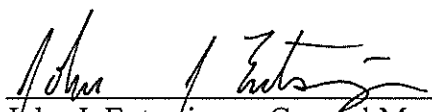
NDEP has determined that the town of Laughlin meets the definition of a disadvantaged community; as such, the community is eligible to receive a subsidy in the form of 100% forgiveness of the loan principal.

In November 2017, the State Board for Financing Water Projects notified the District of its approval of a principal forgiveness loan in the amount of \$500,000. This funding will be used to construct and equip a high capacity well adjacent to the Colorado River to employ riverbank filtration (RBF), a natural process proven effective in treating constituents of concern. Construction of the RBF well is intended to improve Laughlin's water quality and increase the reliability of its water system.

At this time, it is recommended that the Board of Trustees approve the attached agreement, which includes the provisions necessary to obtain loan funds for the District.

This agreement is authorized pursuant to NRS 277.180. The office of the General Counsel has reviewed and approved the agreement.

Respectfully submitted:

  
John J. Entsminger, General Manager  
JJE:KB:kn  
Attachment

AGENDA  
ITEM #

**5**

**STATE OF NEVADA**  
**DRINKING WATER STATE REVOLVING FUND**  
**LOAN CONTRACT**  
**CONTRACT NO. DW1906**

This loan contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 between the State of Nevada acting by and through the Department of Conservation and Natural Resources, Division of Environmental Protection, hereafter referred to as the Division, and the Big Bend Water District hereafter referred to as the Recipient. This loan contract is to provide funding as outlined in Section 1 of this contract.

**WHEREAS:**

1. The Safe Drinking Water Act (42 U.S.C. §§ 300f et seq., as amended) and NRS 445A.200 to 445A.295, inclusive, authorize the Division to enter into contracts for financial assistance for construction of public water system Projects with community public water systems, whether publicly or privately owned, and non-profit or publicly owned non-community public water systems; and
2. The account for the revolving fund has been created in the state treasury pursuant to NRS 445A.255(1) for the purposes of providing loans to finance the construction of projects for public water systems; and
3. The Recipient is responsible for operating and maintaining a public water system within the State of Nevada; and
4. The Recipient has made application for a loan related to a project hereafter described. Said Project has been determined by the Division to be eligible for a loan pursuant to applicable Federal and State laws, rules, regulations, and guidance; and

1 5. The Board for Financing Water Projects has approved pursuant to NRS 445A.265(3) the  
2 commitment of funds from the account for the revolving fund to fund the Project described  
3 in Section 1 below (See Exhibit A.); and

4 6. Any Federal Funds used for funding of this loan will be provided through the Capitalization  
5 Grants for Drinking Water State Revolving Funds CFDA# 66.468 through the United  
6 States Environmental Protection Agency.

7  
8 **NOW, THEREFORE**, it is agreed as follows:

9  
10 **SECTION 1. PROJECT DESCRIPTION**

11 The project in general includes the construction of a well located adjacent to the Colorado River  
12 on the property that currently houses the Recipient's river intake pumping system.

13  
14 **SECTION 2. INCORPORATION OF DOCUMENTS AND GENERAL RECIPIENT**  
15 **COMMITMENTS**

16 1. This contract incorporates the following documents:

17 (A) Exhibit A, Resolution of Board for Financing Water Projects for Commitment of  
18 Funds from the Account for the Revolving Fund, and

19 (B) Exhibit B, Listing of Cross-Cutting Federal Authorities for Assistance Subgrants, and

20 (C) Exhibit C, Certification Regarding Lobbying, and

21 (D) Exhibit D, Wage Rate Requirements Under The Consolidated and Further  
22 Continuing Appropriations Act, and

23 (E) Exhibit E, American Iron and Steel Requirements, and

24 (F) Exhibit F, Disadvantaged Business Enterprise Guidance, and

25 (G) Exhibit G, EPA Signage/Public Awareness Guidelines.

26  
27 2. The Recipient accepts and agrees to comply with all terms, provisions, conditions and  
28 commitments of this contract, including all incorporated documents, and to fulfill all

1        assurances, declarations, representations and commitments made by the Recipient in its  
2        application and accompanying documents filed in support of its request for a loan.

3  
4        **SECTION 3. ESTIMATED COST OF PROJECT**

5        The estimated total cost of the Project, including associated planning and design costs is **one**  
6        **million, four hundred, eighty-nine thousand, five hundred dollars (\$1,489,500).**

7  
8        **SECTION 4. MAXIMUM LOAN AMOUNT**

9        Subject to all of the terms, provisions and conditions of this contract, and subject to the  
10       availability of Federal funds, the Division will loan the sum, not to exceed **five hundred**  
11       **thousand dollars (\$500,000)** to the Recipient from the account for the revolving fund. This  
12       amount shall accrue no interest at any point before or after disbursement.

13  
14       **SECTION 5. PRINCIPAL FORGIVENESS**

15       The Division has determined that the Recipient meets the requirements to receive additional  
16       subsidy as spelled out in Nevada's Intended Use Plan. Since the recipient is eligible for  
17       additional subsidy, 100% of the principal is immediately forgiven upon disbursement.

18  
19       **SECTION 6. TERM**

20       This contract shall take effect upon execution of the contract by the Division and the Recipient,  
21       and for the purpose of this section, the term of this contract is for no more than 20 years from  
22       the date of this loan contract.

23  
24       **SECTION 7. LOAN DISBURSEMENT; AVAILABILITY OF FUNDS**

- 25       1.    The Recipient agrees to draw funds available in section 4 within three (3) years from the  
26       date of this contract. Funds will be subject to de-obligation and/or review after this time  
27       period by the Division.

2. Except as may be otherwise provided in this contract, loan amounts will be disbursed as follows:

(a) Upon execution and return of this loan contract, the Recipient may request disbursement of any planning and design included in the loan amount. The planning and design amount due will be disbursed upon submittal by the Recipient of sufficient documentation of costs and the Payment Request Form.

(b) Additional loan funds will be promptly disbursed to the Recipient for Project costs incurred by the Recipient upon receipt by the Division of proper and acceptable Payment Request Forms from the Recipient. The Recipient agrees that it will not request payment for any Project cost until such cost has been incurred and is due and payable, although it is agreed that actual payment of such cost by the Recipient is not required as a condition of payment request. The Recipient agrees to provide documentation with each payment request that costs shown in the payment request have been incurred and are due and payable at the time of the request.

(c) The Division's obligation to pay any sum to the Recipient under any provision of this contract is contingent upon the availability of sufficient funds to permit the payments provided for herein. In the event that sufficient funds as determined by the Division do not become available for any reason, the Division shall not be obligated to make any payments to the Recipient under this contract. Upon knowledge that, for any reason, funds are insufficient to permit payments provided for herein to any recipient of revolving fund for loans to community water system and non-transient water systems for costs of capital improvements, the Division shall promptly notice Recipient in writing of such insufficiency. This provision shall be construed as a condition precedent to the obligation of the Division to make any payments under this contract. Nothing in this contract shall be construed to provide the Recipient with a right of priority for payment over any other entity. If any payments, which are otherwise due to the Recipient under this contract, are deferred

1 because of unavailability of sufficient funds, such payments will promptly be made to the  
2 Recipient when sufficient funds do become available.

#### 4 **SECTION 8. WITHHOLDING OF LOAN DISBURSEMENT**

5 The Division may withhold all or any portion of the loan funds provided for by this contract in the  
6 event that:

- 7 1. The Recipient has materially violated, or threatens to materially violate, any term,  
8 provision, condition or commitment of this contract, or
- 9 2. The Recipient fails to maintain reasonable progress toward completion of the Project.

#### 11 **SECTION 9. REPAYMENT OF LOAN**

12 Not applicable; principal forgiveness loan.

#### 14 **SECTION 10. CONSTRUCTION SCHEDULE**

15 The Recipient shall submit a schedule for construction to the Division. The Recipient shall  
16 update the schedule in the event the completion date changes for a period of 90 days or more  
17 beyond the estimated date of Project completion previously provided to the Division.

#### 19 **SECTION 11. RESIDENT ENGINEER AND INSPECTOR**

20 The Recipient is required to hire a qualified, full-time resident engineer and inspector(s), unless  
21 the Division in writing waives this requirement.

#### 23 **SECTION 12. CONSTRUCTION ACTIVITIES AND NOTIFICATIONS**

- 24 1. The Recipient shall maintain and provide the Division with a current list of individuals in  
25 responsible charge for notification and communication.
- 26 2. The Recipient agrees to promptly notify the Division in writing of:
  - 27 2.1. Any substantial change in scope of the Project;

1 2.2. Cessation of all major construction work on the Project where such cessation of work  
2 is expected to or does extend for a period of 30 days or more;

3 2.3. Any circumstance, combination of circumstances, or condition, which is expected to  
4 or does delay completion of construction for a period of 90 days or more beyond the  
5 estimated date of Project completion previously provided to the Division, or

6 2.4. Project final completion.  
7

### 8 **SECTION 13. PROJECT ACCESS**

9 The Recipient agrees to ensure that the Division, or any authorized representative thereof, will  
10 have suitable access to the Project site at reasonable times during Project construction.  
11

### 12 **SECTION 14. COMPLETION OF PROJECT**

13 1. The Recipient agrees to proceed with, and complete construction of, the Project in  
14 substantial accordance with Project plans, specifications, and schedules submitted to the  
15 Division in accordance with NAC 445A.67625 to NAC 445A.67627, inclusive.

16 2. Upon completion of construction of the Project, the Recipient agrees to expeditiously  
17 begin operation utilizing the newly constructed project. The Recipient will establish a  
18 reasonable estimated Project completion date, and the Recipient agrees to make all  
19 reasonable efforts to meet the date so established. Such date shall be binding upon the  
20 Recipient unless modified in writing by the Division upon a showing of good cause by the  
21 Recipient. Extension of the Project completion date by the Division shall not be  
22 unreasonably withheld.  
23

### 24 **SECTION 15. RECORD DRAWINGS**

25 After completion of the Project, the Recipient shall provide the Division with as-built record  
26 drawings for the Project.  
27

1    **SECTION 16. PROJECT CERTIFICATION**

2    Within 30 days after completion of the Project, the Recipient shall provide to the Division the  
3    certification required pursuant to NAC 445A.66715.  
4

5    **SECTION 17. OPERATION AND MAINTENANCE**

6    The Recipient agrees to properly staff, operate and maintain all portions of the Project during its  
7    useful life in accordance with all applicable state laws, rules and regulations. Upon reasonable  
8    notice, the Recipient shall make available to the Division the operation and maintenance  
9    manuals for the Project.  
10

11   **SECTION 18. SYSTEM OF USER CHARGES**

- 12   1.   The Recipient shall adopt and maintain in effect during the term of this contract a user  
13       charge system or other source of revenue, which at all times complies with the  
14       requirements of applicable state rules, regulations and guidelines.
- 15   2.   The Recipient agrees to administer a system of user charges acceptable to the Division  
16       pursuant to NAC 445A.676144 and 445A.676146. The Recipient further agrees to  
17       periodically review and modify the system of user charges as necessary to assure its  
18       reasonable adequacy to repay the loan, and to cover operating costs and meet other  
19       financial obligations of the Recipient. The system of user charges and all modifications  
20       thereto shall be consistent with NAC 445A.676144 and 445A.676146 and shall be  
21       maintained to the reasonable satisfaction of the Division.  
22

23   **SECTION 19. CONTINUOUS USE OF PROJECT**

24   The Recipient agrees that it will not abandon, substantially discontinue use of, or dispose of the  
25   Project during the useful life of the Project without prior written approval of the Division.  
26  
27



1   **SECTION 20. USEFUL LIFE OF PROJECT**

2   For purposes of this contract, the parties agree that the useful life of the Project is at least 20  
3   years from the date of this loan contract.

4  
5   **SECTION 21. RECORDS**

6   Without limitation of the requirement to maintain Project accounts in accordance with NAC  
7   445A.67629, the Recipient agrees to:

- 8   1.   Establish an official file for the Project which shall adequately document all significant  
9       actions relative to the Project;
- 10   2.   Establish accounts which will adequately and accurately depict all amounts received and  
11       expended on the Project, including all loan funds received under this contract;
- 12   3.   Establish accounts which will adequately depict all income received which is attributable to  
13       the Project, specifically including any income attributable to loan funds disbursed under  
14       this contract;
- 15   4.   Establish an accounting system which will accurately depict final total costs of the Project,  
16       including both direct and indirect costs;
- 17   5.   Establish such accounts and maintain such records as may be necessary for the Division  
18       to fulfill federal reporting requirements, including any and all reporting requirements under  
19       federal tax statutes or regulations;
- 20   6.   If a force account is used by the Recipient for any phase of the Project, other than for  
21       planning, design and construction management and administration provided for by  
22       allowance, accounts will be established which reasonably document all employee hours  
23       charged to the Project and the associated tasks performed by each employee;
- 24   7.   The Recipient agrees to retain its Project records for a minimum of three years after final  
25       loan repayment has been made and for such longer period as may be required for the  
26       Division to fulfill federal reporting requirements under federal statutes and regulations. All

1 Recipient records relative to the Project shall be subject at all reasonable times to  
2 inspection, copying and audit by the Division or any authorized representative.

#### 4 **SECTION 22. REPORTS**

5 The Recipient agrees to expeditiously provide, during construction of the Project and thereafter  
6 during the useful life of the Project, such reports, data, and information as may be reasonably  
7 required by the Division, including, but not limited to, material necessary or appropriate for  
8 evaluation of the loan from the account for the revolving fund or to fulfill any reporting  
9 requirements of the federal government. At a minimum, such reports reasonably required by  
10 the Division shall include submission of annual financial statements, prepared on a basis  
11 utilizing "Generally Accepted Accounting Principles" (GAAP).

#### 13 **SECTION 23. ACCOUNTING STANDARDS**

- 14 1. The Recipient will maintain separate Project accounts in accordance with generally  
15 accepted government accounting standards including, but not limited to, standards relating  
16 to the reporting of infrastructure assets and those contained in the Standards for Audit of  
17 Governmental Organizations, Programs, Activities and Functions: promulgated by the U.S.  
18 General Accounting Office.
- 19 2. The recipient agrees to comply with requirements described in 2 CFR §200: Uniform  
20 Administrative Requirements, Cost Principles, and Audit Requirements which apply to  
21 expenditures by a public or non-profit entity of federal monies from all sources in an  
22 amount greater than or equal to \$750,000 in a year.

#### 24 **SECTION 24. FINAL PROJECT AUDIT**

25 The Division, at its option, may call for an audit of financial information relative to the Project,  
26 where the Division determines that an audit is desirable to assure program integrity or where  
27 such an audit becomes necessary because of federal requirements. Where such an audit is

1 called for, the audit shall be performed by a Certified Public Accountant independent of the  
2 Recipient and at the cost of the Recipient. The audit shall be in the form required by the  
3 Division.

#### 4 5 **SECTION 25. TERMINATION; IMMEDIATE REPAYMENT**

- 6 1. This contract may be terminated by written notice during construction of the Project, or  
7 thereafter at any time prior to project completion, at the option of the Division, upon  
8 violation by the Recipient of any material provision of this loan contract after such violation  
9 has been called to the attention of the Recipient by receipt of written notice by Recipient  
10 and after failure of the Recipient to bring itself into compliance with the provisions of this  
11 contract within a reasonable time as established by the Division.
- 12 2. In the event of such termination, the Recipient shall be responsible for any damages  
13 suffered by the State, including those specified in Section 26, and the Recipient agrees to  
14 repay the account for the revolving fund all remaining principal advanced hereunder due in  
15 accordance with the terms of the Ordinance and this contract.

#### 16 17 **SECTION 26. DAMAGES FOR BREACH**

18 In the event that any breach of any of the provisions of this contract by the Recipient shall result  
19 in an obligation on the part of the State to reimburse the federal government, the Recipient shall  
20 immediately reimburse the Division in an amount equal to any damages and penalties paid or  
21 loss incurred by the Division due to such breach.

#### 22 23 **SECTION 27. DISPUTES**

- 24 1. Any dispute arising under this contract, which is not otherwise disposed of, shall be  
25 decided by the Administrator of the Division. The decision shall be reduced to writing and  
26 a copy thereof furnished to the Recipient.

1 2. The decision of the Administrator shall be final and conclusive unless, within thirty (30)  
2 calendar days after the date of mailing the Administrator's decision to the Recipient, the  
3 Recipient mails or otherwise furnishes a written appeal of the decision to the Director of  
4 the Department of Conservation and Natural Resources. In connection with any appeal to  
5 the Director, the appeal shall be treated as a contested case, pursuant to NRS 233B,  
6 including the right to judicial review. Pending final decision of a dispute hereunder, the  
7 Recipient shall continue to fulfill and comply with all the terms, provisions, commitments  
8 and requirements of this loan contract.

9  
10 **SECTION 28. WAIVER**

11 The parties hereto may, from time to time, waive any rights under this contract unless such  
12 waiver is contrary to law, provided that any such waiver must be in writing and must be signed  
13 by the party making such waiver.

14  
15 **SECTION 29. AMENDMENT**

16 This contract may be amended at any time by mutual written agreement of the Division and the  
17 Recipient. An amendment increasing the amount of loan funds committed to the Project is  
18 subject to approval of the Board for Financing Water Projects and the State Treasurer.

19  
20 **SECTION 30. COMPLIANCE WITH OTHER FEDERAL STATUTES AND AUTHORITIES**

21 1. A number of other federal laws and authorities will be applied to loans supported with the  
22 equivalent portion of Federal funds from the capitalization grant made available through  
23 the loan. Exhibit B contains a current list of these other laws and authorities. The  
24 Recipient agrees that it will, at all times, comply with and require its contractors and  
25 subcontractors to comply with all applicable federal, state and local laws, regulations and  
26 requirements.

2. The Recipient recognizes as goals the applicable Minority Business Enterprise (MBE)/Women Business Enterprise (WBE) "fair share" goals negotiated with EPA by the Division for construction, supplies, equipment and services as follows:

Construction	MBE 2%	WBE 2%
Equipment	MBE 1%	WBE 1%
Services	MBE 1%	WBE 2%
Supplies	MBE 1%	WBE 1%

3. The Davis-Bacon Act wages rules apply to the project funded by this loan contract as specified in Exhibit D, Wage Rate Requirements Under Section 1450 (E) of the Safe Drinking Water Act (42 U.S.C.300j-9(E)).

4. Recipients must comply with the "American Iron and Steel (AIS)" requirements for the entirety of the construction activities financed by the assistance agreement through completion of construction as outlined in Exhibit E.

#### **SECTION 31. FORCE MAJEURE**

Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, earthquakes, floods, or unusual atmospheric events. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

#### **SECTION 32. STATE REVIEWS AND INDEMNIFICATION**

1. The Division and Recipient agree that review or approval of Project plans and specifications by the Division is for administrative purposes only and does not constitute confirmation or endorsement of the efficacy of the Project and does not relieve the Recipient of their responsibility to properly plan, design, construct, operate and maintain

1 the Project. The Recipient agrees that they have responsibility for proper planning, design,  
2 construction, operation and maintenance of the Project and that the Division is not  
3 responsible for increased costs resulting from defects in the Project design or construction.

4 2. The parties will not waive and intend to assert available NRS 41 liability limitations in all  
5 cases. Contract liability of both parties shall not be subject to punitive damages. Actual  
6 damages for any State breach shall never exceed the amount of funds which have been  
7 appropriated for payment under this contract, but not yet paid, for the fiscal year budget in  
8 existence at the time of the breach.

9 3. To the fullest extent of limited liability as set forth above, each party shall indemnify, hold  
10 harmless and defend, not excluding the other's right to participate, the other from and  
11 against all liability, claims, actions, damages, losses, and expenses, including but not limited  
12 to reasonable attorneys' fees and costs arising out of any alleged negligent or willful acts or  
13 omissions of the party, its officers, employees and agents. Such obligation shall not be con-  
14 strued to negate, abridge, or otherwise reduce any other right or obligation of indemnity  
15 which would otherwise exist as to any party or person described in this paragraph.

16 4. The indemnification obligation under this paragraph is conditioned upon receipt of written  
17 notice by the indemnifying party within 30 days of the indemnified party's actual notice of  
18 any actual or pending claim or cause of action. The indemnifying party shall not be liable to  
19 hold harmless any attorneys' fees and costs for the indemnified party's chosen right to  
20 participate with legal counsel.

1 **IN WITNESS WHEREOF**, the parties have executed this contract on the dates set forth below.

2

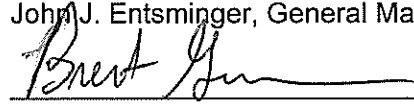
3 **RECIPIENT: BIG BEND WATER DISTRICT**

4

Date: \_\_\_\_\_

5 John J. Entsminger, General Manager

6



Date: 11/20/18

7 ~~for~~ Gregory J. Walch, General Counsel

8

9 **DIVISION OF ENVIRONMENTAL PROTECTION**

10

Date: \_\_\_\_\_

11 Greg Lovato, Administrator

## ATTACHMENT A

### RESOLUTION

#### **A RESOLUTION DESIGNATED THE "11-2017 BIG BEND WATER DISTRICT PROJECT LOAN COMMITMENT RESOLUTION" TO APPROVE A LOAN COMMITMENT FOR THE PURPOSE OF FINANCING CERTAIN PROJECTS.**

**WHEREAS**, the Board for Financing Water Projects (the "Board") of the State of Nevada (the "State") is authorized by Nevada Revised Statutes ("NRS") Chapter 445A.265 to approve the Division of Environmental Protection ("Division") prioritized lists of water projects and to approve the commitment of funds from the account for the revolving fund for loans to community water systems and non-transient water systems for costs of capital improvements required and made necessary pursuant to NRS 445A.800 to 445A.955, inclusive, by the Safe Drinking Water Act (42 U.S.C. §§ 300f *et seq.*) and by the regulations adopted pursuant thereto; and

**WHEREAS**, the Division has the responsibility of administering the Drinking Water State Revolving Fund program; and

**WHEREAS**, on June 14, 2017 the Board, pursuant to NRS 445A.265, approved the 2018 Priority List of water projects eligible for loans from the account for the revolving fund under the Drinking Water State Revolving Fund; and

**WHEREAS**, the Big Bend Water District operates a public water system in Laughlin, Nevada; and

**WHEREAS**, the Big Bend Water District submitted a pre-application to the Division for funding a project to make improvements to the water system, which is hereinafter referred to as the "Project"; and

**WHEREAS**, the Project is included as Project #29 on the Year 2018 Priority List of water projects, which was approved by the Board on June 14, 2017; and

**WHEREAS**, the Big Bend Water District project is ready to proceed; and



## ATTACHMENT A

**WHEREAS**, in connection with seeking a loan, the Big Bend Water District has submitted a written application (“Application”) pursuant to NAC 445A.67613 to the Division; and

**WHEREAS**, the Division has reviewed the Application including supporting material thereof, and has determined that the Big Bend Water District has the technical, managerial, and financial capability to manage and repay a loan for the Project; and

**WHEREAS**, the Division has taken all necessary and proper actions with respect to the Application as required pursuant to the regulations adopted by the State Environmental Commission (NAC 445A.6751 to 445A.67644, inclusive) pertaining to loan applications; and

**WHEREAS**, the Board must give prior approval before the Division may commit any money in the account for the revolving fund for expenditure for the purposes set forth in NRS 445A.275;

***NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD FOR FINANCING WATER PROJECTS OF THE STATE OF NEVADA:***

***Section 1.*** This Resolution shall be known as the “11-2017 Big Bend Water District Project Loan Commitment Resolution.”

***Section 2.*** The terms and conditions for providing a loan to the Big Bend Water District shall be negotiated between the Big Bend Water District and the Division. These terms will include 100% Principal Forgiveness.

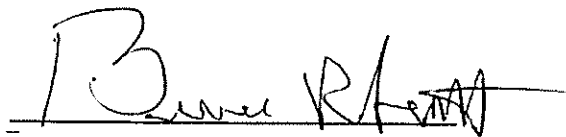
***Section 3.*** Based on the review of the Application by the Division and based on the recommendation submitted by the Division to the Board concerning the Project, and subject to the provisions of Section 2 and 4 of this Resolution, the Board hereby approves a commitment of funds in the amount not to exceed \$500,000 from the account for the revolving fund in accordance with NRS 445A.265.

ATTACHMENT A

*Section 4.* The Board further recommends that the Division take all other necessary and appropriate actions to effectuate the provisions of this Resolution in accordance with NRS 445A.200 to 445A.295, inclusive, and the Regulations adopted pursuant thereto.

*Section 5.* This resolution shall be effective on its passage and approval.

**PASSED, ADOPTED AND SIGNED NOVEMBER 8, 2017**

A handwritten signature in black ink, appearing to read "B. R. H.", written over a horizontal line.

Chairman  
Board for Financing Water Projects

Attest:

A handwritten signature in black ink, appearing to read "D. B.", written over a horizontal line.

Advisor  
Board for Financing Water Projects

ATTACHMENT A

STATE OF NEVADA   )  
                                  ) ss.  
CARSON CITY        )

I, Daralyn Dobson Advisor to the State Board for Financing Water Projects (the "Board"), do hereby certify that:

1. The foregoing pages constitute a true, correct, complete and compared copy of the "11-2017 Big Bend Water District Project Loan Commitment Resolution" (the "Resolution"), which resolution was passed and adopted by the Board at its duly held meeting of November 8, 2017, in Carson City, Nevada.

2. The original of the Resolution was signed by the chairman of the Board and authenticated by me as the Advisor to the Board.

3. The following members of the Board who were present,

Bruce Scott  
Lori Williams  
Steve Walker  
Mike Workman

voted in favor of the passage of the Resolution.

4. All members of the Board were given due and proper notice of such meeting.

5. Pursuant to NRS 241.020, written notice of such meeting was given at least three working days before the meeting:


- (a) By mailing a copy of the notice to each member of the Board:
- (b) By posting a copy of the notice at the principal office of the Board, or if there is no principal office, at the building in which the meeting was held, and at least three other separate, prominent places within the jurisdiction of the Board, to wit:
  - (i) State of Nevada Public Notice Website - <https://notice.nv.gov/>
  - (ii) The Nevada Division of Environmental Protection's public notice website - <https://ndep.nv.gov/posts>
  - (iii) Department of Conservation and Natural Resources, 901 South Stewart Street, Carson City
  - (iv) State Legislative Building, 401 S. Carson Street, Carson City

ATTACHMENT A

- (v) Nevada State Library and Archives, 100 Stewart Street,  
Carson City
- (vi) Nevada Division of Environmental Protection, 2030 E.  
Flamingo Rd. Ste 230, Las Vegas

6. No other proceedings were adopted and no other action taken or considered at such meeting relating to the subject matter of the Resolution.

*IN WITNESS WHEREOF*, I have hereunto set my hand on this date.

	<u>11-8-17</u>
Daralyn Dobson	Date
Advisor	
Board for Financing Water Projects	

## EXHIBIT B

Cross-cutting federal authorities are the requirements of other federal laws and Executive Orders that apply in the case of federally funded projects. The cross-cutters include (but are not limited to): environmental laws such as the Endangered Species Act, the National Historic Preservation Act, executive orders on the protection of wetlands and flood plains, social policy authorities such as executive orders on equal employment opportunity in federally assisted programs, and economic authorities such as rules implementing executive orders on the debarment and suspension of persons who have engaged in misconduct. In the State Revolving Fund programs, compliance with federal cross-cutting authorities is required by all recipients of these federal funds. A list of the possible applicable cross-cutters follows.

### Environmental Authorities

- o Archeological and Historic Preservation Act, Pub. L. 93-291, as amended
- o Protection and Enhancement of the Cultural Environment
- o Clean Air Act, Pub. L. 95-95, as amended
- o Coastal Barrier Resources Act, Pub. L. 97-348
- o Coastal Zone Management Act, Pub. L. 92-583, as amended
- o Endangered Species Act, Pub. L. 93-205, as amended
- o Environmental Justice, Executive Order 12898
- o Flood Plain Management, Executive Order 11988 as amended by Executive Order 12148
- o Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608
- o Farmland Protection Policy Act, Pub. L. 97-98
- o Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- o Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265
- o National Environmental Policy Act, Pub. L. 91-190
- o National Historic Preservation Act, Pub. L. 89-655, as amended
- o Safe Drinking Water Act, Pub. L. 93-523, as amended
- o Wild and Scenic Rivers Act, Pub. L. 90-54 as amended
- o Migratory Bird Act

### Economic and Miscellaneous Authorities

- o Debarment and Suspension, Executive Order 12549
- o Demonstration Cities and Metropolitan Development Act, Pub. L. 89-754, as amended, and Executive Order 12372
- o Drug-Free Workplace Act, Pub. L. 100-690
- o New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- o Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738
- o Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

### Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- o Older Americans Act, Pub. L. 94-135
- o Equal Employment Opportunity, Executive Order 11246
- o Section 13 of the Clean Water Act, Pub. L. 92-500
- o Section 504 of the Rehabilitation Act, Pub. L. 93-112
- o Title VI of the Civil Rights Act, Pub. L. 88-352

### Disadvantaged Business Enterprise Authorities

- o Small, Minority, and Women-owned Business Enterprises, Executive Orders No. 11625, 12138, and 12432
- o Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988 Pub. L. No. 100-590
- o 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements.



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EPA Project Control Number

## **CERTIFICATION REGARDING LOBBYING**

### **CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Typed Name & Title of Authorized Representative

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Signature and Date of Authorized Representative

## EXHIBIT D

### Preamble

With respect to the Clean Water State Revolving Funds and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides sub grants or loans to eligible entities within the State. Typically, the sub recipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the sub recipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

### **I. Requirements Under The Consolidated Appropriations Act For Sub recipients That Are Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance - with respect to State recipients and sub recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Elizabeth Borowiec, [borowiec.elizabeth@epa.gov](mailto:borowiec.elizabeth@epa.gov), 415-972-3419, of EPA Region 9, for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

#### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by Clean Water State Revolving Funds and Safe Drinking Water State Revolving Funds. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

#### **2. Obtaining Wage Determinations.**

(a) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other

## EXHIBIT D

methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.
  - (ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.
- (c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### 3. Contract and Subcontract provisions.



## EXHIBIT D

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or Consolidated Appropriations Act, 2017, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

## EXHIBIT D

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable

## EXHIBIT D

Standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### (3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social

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security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of

## EXHIBIT D

the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### (4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or sub contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal

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certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the

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contractor (or any of its subcontractors) and sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor,

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shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

### 5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB.

Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.



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(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

### **II. Requirements Under The Consolidated Appropriations Act, 2017 (P.L. 115-31) For Sub recipients That Are Not Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under –FY 2017 Consolidated Appropriations Act with respect to sub recipients that are not governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact Elizabeth Borowiec, [borowiec.elizabeth@epa.gov](mailto:borowiec.elizabeth@epa.gov) , 415-972-3419, EPA Grants Management Office for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

**Under these terms and conditions, the sub recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.**

#### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

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Under the FY 2017 Consolidated Appropriations Act -, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a Clean Water State Revolving Funds and Safe Drinking Water State Revolving Funds,-. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

### 2. Obtaining Wage Determinations.

(a) Sub recipients must obtain proposed wage determinations for specific localities at [www.wdol.gov](http://www.wdol.gov). After the Sub recipient obtains its proposed wage determination, it must submit the wage determination to Elizabeth Borowiec, [borowiec.elizabeth@epa.gov](mailto:borowiec.elizabeth@epa.gov) , 415-972-3419, EPA Region 9, for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.
- (ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

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(d) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2017 Consolidated Appropriations Act -, the following clauses:

#### **(1) Minimum wages.**

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §

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5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis- Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of

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receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a

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plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without

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rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### (4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other

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than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.



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(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall

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require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## EXHIBIT D

### 5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c). The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

## EXHIBIT E

### Use of American Iron and Steel (AIS requirement) H.R. 3547, Division G, Title IV

Sec. 436. (a)(I) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works **unless all of the iron and steel products used in the project are produced in the United States.**

**(a) Definitions.** As used in this award term and condition—

- (1) “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (2) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

**(b) Domestic preference.**

- (1) This award term and condition implements P.L. 114-133, Consolidated Appropriations Act, 2016, Section 424, by requiring that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system are produced in the United States except as provided in paragraph (b)(2) of this section and condition.
- (2) This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that:—
  - (i) applying the requirement would be inconsistent with the public interest;
  - (ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
  - (iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

**(c) Request for a Waiver under (b)(3) of this section**

- (1) Any recipient request to use foreign iron or steel products in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—
  - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
  - (B) Unit of measure;
  - (C) Quantity;
  - (D) Cost;
  - (E) Time of delivery or availability;
  - (F) Location of the project;
  - (G) Name and address of the proposed supplier; and
  - (H) A detailed justification of the reason for use of foreign iron or steel products cited in accordance with paragraph (b)(3) of this section.
- (2) If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.
- (3) Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with the Consolidated Appropriations Act, 2016 (P.L. 114-133).

**(d)** This term and condition shall be applied in a manner consistent with United States obligations under international agreements.

If you require further clarification or guidelines, please contact Michelle Stamates at (775) 687-9331 or [mstamate@ndep.nv.gov](mailto:mstamate@ndep.nv.gov).

# **State Revolving Fund**

## **Disadvantaged Business Enterprise Program**

### **Guidance to Borrowers & Contractors**

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- Good Faith Effort for DBE Participation
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5700-52A Part II

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Subcontractor Performance Appendix D: Report 6100-2

– DBE Subcontractor Participation

## **State Revolving Fund**

### **Disadvantaged Business Enterprise Program**

#### **Section 1: Overview**

As stipulated by the Environmental Protection Agency (EPA), Nevada State Revolving Fund (SRF) borrowers and their contractors are required to make good faith efforts to utilize businesses classified as Disadvantaged Business Enterprises (DBEs) for goods and services associated with SRF financed projects. A borrower and their contractors should utilize DBEs through prime contracting, subcontracting, joint-ventures, other business relationships, and through the procurement of supplies, materials, and equipment.

#### **Section 2: Definition of Disadvantaged Business Enterprise (DBE)**

A DBE is a business owned and/or controlled by socially and economically disadvantaged individuals including Minority and Women Business Enterprises.

**Minority Business Enterprise (MBE)** – A business which is at least 51% owned and/or controlled by one or more U.S. citizens who are Black, Hispanic, Portuguese, Asian American, American Indian, or groups found to be economically and socially disadvantaged by the U.S. Small Business Administration pursuant to Section 8(a) of the Federal Small Business Act.

**Women Business Enterprise (WBE)** – A business which is at least 51% owned and/or controlled by one or more U.S. citizens who are women.

#### **Section 3: Disadvantage Business Enterprise (DBE) requirements and contract conditions**

The following pages include conditions which must be included in all bidding and contract documents for SRF financed projects including:

- DBE related laws, rules, and regulations
- Equal Employment
- DBE Participation Goals
- Good Faith Effort for DBE Participation
- DBE Contract Terms and Conditions

**Nevada State Revolving Fund**  
**Disadvantaged Business Enterprise (DBE) and Contract Conditions**

The DBE Solicitation and Contract Conditions must be physically included in all bidding and contract documents for SRF financed projects.

**DBE Related Laws, Rules, and Regulations**

This project is being financed in whole or in part by the Nevada State Revolving Fund (SRF). The borrower is required to comply with the following laws, rules and regulations and must ensure that their contractor(s) also comply with these laws, rules, and regulations.

1. Ensures access to facilities or programs regardless of race, color, national origin, sex, age or handicap: Title VI of the Civil Rights Act of 1964 (P.L. 88-352, Section 504 of the Rehabilitation Act, P.L. 93-112 (87 Stat. 355, 29 U.S.C. Sec. 794), Older Americans Act (P.L. 94-135, 89 Stat. 713, 89 Stat. 728 Sec. 303, 42 U.S.C. 6102).
2. Encourages recipients of federal funds to award construction, supply and professional service contracts to minority and women's business enterprises (MBE/WBE) and small businesses and requires recipients to utilize affirmative steps in procurement: Executive Orders 11625, 12138 and 12432; Section 129 of P. L. 100-590 Small Businesses Reauthorization & Amendment Act of 1988; Public Law 102-389 (42 U.S.C. 4370d); a 1993 appropriations act ("EPA's 8% statute"); Title X of the Clean Air Acts Amendments of 1990 (42 U.S.C. 7601 note) ("EPA's 10% statute").
3. Prohibits entering into contracts or sub-contracts with individuals or businesses who are debarred or suspended: Executive Order 12549, 3 CFR, 189 and 40 CFR Part 32. Borrowers are required to check the status of all contractors (construction and professional services) and must require contractors to check the status of subcontractors for contracts expected to be equal to or over \$25,000. Information on debarment is available at the following website: [www.sam.gov](http://www.sam.gov).
4. 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements.
5. Prohibits discrimination by federal contractors and subcontractors for reasons of race, color, religion, sex, and national origin: Equal Employment Executive Order 11246, as amended by Executive Orders 11375 and 12086 and subsequent regulations. Inclusion of the seven clauses (located below in the Equal Employment section) from Section 202 of E. O. 11246 as amended by E. O. 11375 and 12086 are required in all project related contracts and subcontracts over \$10,000.

**Equal Employment** (must be included in all contracts over \$10,000)

During the performance of this contract, the contractor agrees as follow:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants



## EXHIBIT F

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

### **DBE Participation Goals**

Borrowers and their prime contractors must follow and document good faith efforts to meet the DBE Participation Goals listed below:

Goods or Services	MBE Participation Goal	WBE Participation Goal
<b>Construction</b>	2%	2%
<b>Equipment</b>	1%	1%
<b>Services</b>	1%	2%
<b>Supplies</b>	1%	1%

The DBE Participation Goals are not quotas – SRF will not penalize a borrower and their contractors if they cannot meet the goals. However, SRF will require a borrower and their contractors to make a good faith effort to meet these goals.

## EXHIBIT F

### **Good Faith Effort for DBE Participation**

EPA defines "Good Faith Effort" to include, at a minimum, the following actions by a borrower and their contractors and sub-contractors:

1. Include DBEs on solicitation lists.
2. Assure that DBEs are solicited once they are identified.
3. Divide total requirements into smaller tasks to permit maximum DBE participation, where feasible. Encourage the joint submission of bids by multiple DBE businesses.
4. Establish delivery schedules which will encourage MBE/WBE participation, where feasible.
5. Encourage use of the services of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce (MBDA) OR State/Regional/Local equivalent.
6. Require that each party to a subgrant, subagreement, or contract award take the good faith efforts outlined.

### **DBE Contract Terms and Conditions**

The following conditions must be included in all procurement contracts entered into by the borrower and their contractors and subcontractors for SRF financed projects:

1. The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the loan recipient.
2. The prime contractor must document its efforts towards meeting the six "Good Faith Efforts for DBE Participation" even if the prime contractor has achieved its fair share objectives.
3. The prime contractor must notify the loan recipient in writing prior to the termination of any DBE subcontractor for convenience by the prime contractor.
4. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six "Good Faith Efforts for DBE Participation" if soliciting a replacement subcontractor.
5. All DBE procurements whether from bid documents or subsequent draw request are to be **reported on form 5700-52A to the SRF.**
6. The prime contractor must submit **Form 6100-4 – DBE Subcontractor Utilization** to the borrower as part of bid proposals.
7. The prime contractor must ensure DBE subcontractors submit **Form 6100-3 – DBE Subcontractor Performance**. In turn, the prime contractor submits the forms to the borrower.
8. The prime contractor must provide **Form 6100-2 – DBE Subcontractor Participation** to DBE subcontractors. DBE subcontractors may submit Form 6100-2 to:

DBE/MBE/WBE Coordinator  
U.S. Environmental Protection Agency,  
Region 9 75 Hawthorne Street (PMD-1)  
San Francisco, CA 94105

## EXHIBIT F

Report	Provided By:	Completed By:	Submitted To:	Appendix
DBE Reporting Form 5700-52A Part II	SRF	Borrower	SRF	A
Form 6100-4	Borrower	Prime Contractor	Borrower	B
Form 6100-3	Prime Contractor	Sub-Contractor	Borrower	C
Form 6100-2	Prime Contractor	Sub-Contractor	EPA, Region 9	D

8. Each procurement contract signed must include the following term and condition:

**“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”**

EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Sources to Identify and Certify DBEs**

<b>Source</b>	<b>Phone</b>	<b>Website/E-mail</b>
Nevada Department of Transportation Civil Rights Program (DBE assistance and list)	External Civil Rights and Contract Compliance-Nevada Unified Certification Program <b>800-267-1971</b>	<a href="http://nevadadbe.com">http://nevadadbe.com</a>
Nevada Department of Transportation DBE Program		<a href="http://nevadadot.com/nevadaDBE/dbe.aspx">http://nevadadot.com/nevadaDBE/dbe.aspx</a>
Nevada Governor's Office of Economic Development – Procurement Outreach Program	800-336-1600	<a href="http://diversifynevada.com/programs-resources/procurement-outreach">http://diversifynevada.com/programs-resources/procurement-outreach</a>
Nevada Small Business Development Center (NSBDC)	800-240-7094 DBE assistance 775-687-9921	<a href="http://dbe.nsbdc.org/">http://dbe.nsbdc.org/</a>
Hispanic Business Nevada		<a href="http://hispanicbusinessnevada.com/">http://hispanicbusinessnevada.com/</a>
US Environmental Protection Agency Small Business Program		<a href="http://www.epa.gov/osbp/dbe_team.htm">http://www.epa.gov/osbp/dbe_team.htm</a>
US Small Business Admin. (SBA)		<a href="http://www.sba.gov/">http://www.sba.gov/</a>
Minority Business Development Agency-US Dept. of Commerce		<a href="http://www.mbda.gov/">http://www.mbda.gov/</a>

**EXHIBIT F**

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix A**

**DBE Reporting Form 5700-52A Part II**

When requesting loan draws which involve procurements to MBE/WBE businesses, information must be reported on forms provided by SRF as shown on the next page.

**EXHIBIT F**

[illegible]

Note: Refer to Terms and conditions of your Assistance Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports to EPA beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed. EPA FORM 5700-52A - (Approval Expires 06/30/14)

**Instructions for Part II:**

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

1. Check whether this procurement was made by the recipient, sub-recipient/SRF loan recipient, or the prime contractor.
2. Check either the MBE or WBE column. If a firm is both an MBE and WBE, the recipient may choose to count the entire procurement towards EITHER its MBE or WBE accomplishments. The recipient may also divide the total amount of the procurement (using any ratio it so chooses) and count those divided amounts toward its MBE and WBE accomplishments. If the recipient chooses to divide the procurement amount and count portions toward its MBE and WBE accomplishments, please state the appropriate amounts under the MBE and WBE columns on the form. **The combined MBE and WBE amounts for that MBE/WBE contractor must not exceed the "Value of the Procurement" reported in column #3**
3. Dollar value of procurement.
4. Date of procurement, shown as month, day, year. Date of procurement is defined as the date the contract or procurement was awarded, **not** the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award. **(Where direct purchasing is the procurement method, the date of procurement is the date the purchase was made)**
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (e.g., enter 1 if construction, 2 if supplies, etc).
6. Name, address, and telephone number of MBE/WBE firm.
7. Send to SRF.

**\*\*This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30, 31, and 33); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.**

The public reporting and recording burden for this collection of information is estimated to average 1 hour per

response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Include the OMB Control number in any correspondence. Do not send the completed form to this address.

**EXHIBIT F**

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix  
B**

**Form 6100-4 -- DBE Subcontractor Utilization**

The borrower must require potential prime contractors to submit Form 6100-4, as shown on the next page, to the borrower as part of bid proposals.



## EXHIBIT F



OMB Control No: 2090-  
0030 Approved:  
8/13/2013 Approval  
Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	<input type="radio"/> YES	<input checked="" type="radio"/> NO	
If yes, please complete the table below. If no, please explain:			
<b>Subcontractor Name/ Company Name</b>	<b>Company Address/ Phone/ Email</b>	<b>Est. Dollar Amt</b>	<b>Currently DBE Certified?</b>

Continue on back if needed

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

## EXHIBIT F



OMB Control No: 2090-  
0030 Approved:  
8/13/2013 Approval  
Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix  
C**

**Form 6100-3 – DBE Subcontractor Performance**

The prime contractor must require potential subcontractors to submit Form 6100-3, as show on the next page, as part of bid proposals. In turn, prime contractors submit the data to the borrower.

## EXHIBIT F



OMB Control No: 2090-0030 Approved:  
8/13/2013 Approval  
Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Performance Form**

This form is intended to capture the DBE<sup>1</sup> subcontractor's<sup>2</sup> description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services , Equipment or Supplies	Price of Work Submitted to the Prime Contractor

DBE Certified By: <input type="radio"/> DOT <input type="radio"/> SBA <input type="radio"/> Other: _____	Meets/ exceeds EPA certification standards? <input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> Unknown
---	---

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

## EXHIBIT F



OMB Control No: 2090-  
0030 Approved:  
8/13/2013 Approval  
Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix  
D**

**Form 6100-2 – DBE Subcontractor Participation**

The prime contractor must provide subcontractors the opportunity to submit Form 6100-2, as shown on the next page, to:

DBE/MBE/WBE Coordinator  
U.S. Environmental Protection Agency,  
Region 9 75 Hawthorne Street (PMD-1)  
San Francisco, CA 94105

## EXHIBIT F



OMB Control No: 2090-0030 Approved:  
8/13/2013 Approval  
Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE<sup>1</sup> subcontractor<sup>2</sup> the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services , Equipment or Supplies	Amount Received by Prime Contractor

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

# Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

Please use the space below to report any concerns regarding the above EPA-funded project:

[illegible]

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.



## EXHIBIT G

### Environmental Protection Agency (EPA) Guidelines to Enhance Public Awareness of CWSRF and DWSRF Programs

Recipients are required to promote public understanding of the positive benefits of CWSRF and DWSRF funding to towns, cities, municipalities and water systems and to communicate EPA's role in funding assistance.

The below listed guidelines present a number of options which communities can explore to implement EPA's policy. The option selected should best communicate the positive role EPA funding of the state CWSRF and DWSRF programs plays in communities across the country, while remaining cost-effective and accessible to a broad audience.

- **Standard signage**
- **Posters, brochures or wall signage in a public building or location**
- **Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility**
- **Insert or Pamphlet in Water/Sewer Bill**
- **Online signage placed on community website or social media outlet**
- **Press release**

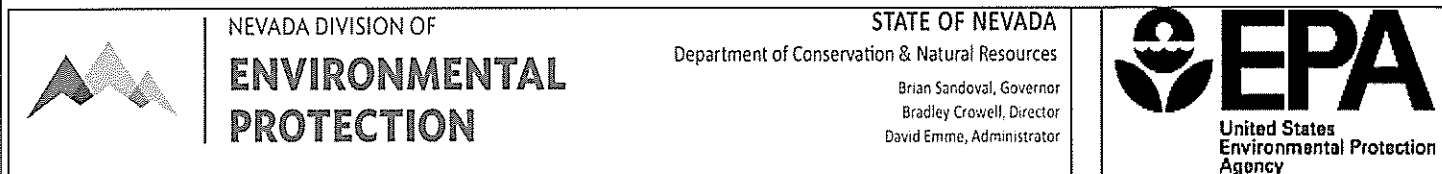
#### **1. Standard Signage**

to include:

- The name of the facility, project and community
- Project cost
- The State of Nevada, State Revolving Fund program
- The EPA and State of Nevada logos as shown

Program and logos:

***This project received funding from the State  
Revolving Loan Fund Program which is financially  
supported by the State of Nevada and the EPA***



The EPA logo should be made the same relative size as the other logos on the signage.

Sign logo and seal specifications are available at:

[http://www.epa.gov/ogd/tc/epa\\_logo\\_seal\\_specifications\\_for\\_infrastructure\\_grants.pdf](http://www.epa.gov/ogd/tc/epa_logo_seal_specifications_for_infrastructure_grants.pdf)

**Note: The EPA logo may only be used on a sign**

## EXHIBIT G

### Environmental Protection Agency (EPA) Guidelines to Enhance Public Awareness of CWSRF and DWSRF Programs

- 2. Posters, Brochures or Wall Signage**
- 3. Newsletter, Periodical or Press Release**
- 4. Insert or Pamphlet**
- 5. Online & Social Media Publicity**

to include:

- Name of facility, project and community
- State SRF administering the program
- Project is wholly or partially funded with EPA funding
- Brief description of project
- Brief description of the water quality benefits the project will achieve

Posters or brochures should be placed in a public location that is accessible to a wide audience of community members.

If a recipient decides on a public or media event, the SRF must be notified 3 weeks in advance to allow us to notify EPA to provide the opportunity to attend the event. Notify:

Jason Cooper  
[j.cooper@ndep.nv.gov](mailto:j.cooper@ndep.nv.gov)  
775 687-9531

#### EPA Suggested Language for Alternate Options:

“Construction of upgrades and improvements to the **[Name of Facility, Project Location, or Wastewater Treatment Plant]** were financed by the **[Clean Water/Drinking Water]** State Revolving Fund. The **[Clean Water/Drinking Water]** program is administered by the Nevada Division of Environmental Protection with joint funding from the U.S. Environmental Protection Agency and State of Nevada. This project is **[description of project]** and will provide water quality benefits **[detail specifying particular benefits]** for community residents and businesses in and near **[name of town, city, and/or water body or watershed to benefit from project]**.

If you need any further information or have any questions relating to the EPA requirement, please contact:

Michelle Stamatēs  
[mstamates@ndep.nv.gov](mailto:mstamates@ndep.nv.gov)  
775 687-9331

or Jason Cooper at above address or phone

**BIG BEND WATER DISTRICT  
BOARD OF TRUSTEES  
AGENDA ITEM**

December 4, 2018

<b>Subject:</b> Annual Financial Report	<b>Director's Backup</b>
<b>Petitioner:</b> Kevin Bethel, Chief Financial Officer	
<b>Recommendations:</b> That the Board of Trustees accept the District's Annual Financial Report for the period ending June 30, 2018, and authorize its submission to the Nevada Department of Taxation.	

**Fiscal Impact:**

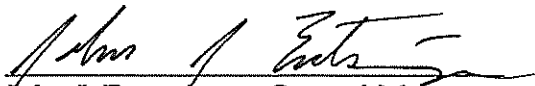
None by approval of the above recommendation.

**Background:**

The Las Vegas Valley Water District, as operating agent for the District, prepared an Annual Financial Report (AFR) for the fiscal year ending June 30, 2018. The AFR was audited by the District's independent auditor, Piercy Bowler Taylor & Kern. The AFR is being presented to the Board of Trustees and, upon acceptance, will be submitted to the Nevada Department of Taxation in accordance with NRS 354.624(6).

This action is authorized pursuant to NRS 354.624(6). The office of the General Counsel has reviewed and approved this agenda item.

Respectfully submitted:



John J. Entsminger, General Manager

JJE:KB:kn

Attachment

AGENDA ITEM #
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6



**BIG BEND  
WATER DISTRICT™**



## **ANNUAL FINANCIAL REPORT**

A Component Unit of Clark County, Nevada  
For Fiscal Year Ended June 30, 2018

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The Big Bend Water District (BBWD) is a general improvement district and political subdivision of the State of Nevada that was created in 1983 to supply water to Laughlin residents and businesses. The Las Vegas Valley Water District operates and maintains BBWD, which serves approximately 9,000 citizens in Laughlin, Nevada.

# **Annual Financial Report**

## **Big Bend Water District**

**July 1, 2017 - June 30, 2018**

**Laughlin, Nevada**

**(a component unit of Clark County, Nevada)**

E. Kevin Bethel, Chief Financial Officer  
Las Vegas Valley Water District  
(Operating Agent for the Big Bend Water District)  
1001 South Valley View Boulevard  
Las Vegas, Nevada 89153

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**Big Bend Water District  
Table of Contents  
For the Fiscal Year Ended June 30, 2018**

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## **INDEPENDENT AUDITORS' REPORT ON FINANCIAL STATEMENTS AND SUPPLEMENTARY INFORMATION**

Board of Trustees  
Big Bend Water District  
Las Vegas, NV

We have audited the accompanying financial statements of the Big Bend Water District (the District), a discretely presented component unit of Clark County, Nevada, as of and for the year ended June 30, 2018 and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

An audit performed in accordance with applicable professional standards is a process designed to obtain reasonable assurance about whether the District's basic financial statements are free from material misstatement. This process involves performing procedures to obtain audit evidence about the amounts and disclosures in the basic financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the basic financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the District's preparation and fair presentation of the basic financial statements to enable the design of audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of significant accounting estimates made by management, as well as the overall presentation of the basic financial statements.

**Management's Responsibility for the Financial Statements.** Management is responsible for the preparation and fair presentation of the basic financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of basic financial statements that are free from material misstatement, whether due to fraud or error.

**Auditors' Responsibility.** Our responsibility is to express an opinion on the basic financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

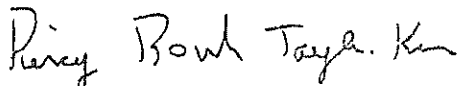
**Opinion.** In our opinion, the basic financial statements referred to above present fairly, in all material respects, the financial position of the District as of June 30, 2018, and the changes in financial position and cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

**Other Information.** Our audit was conducted for the purpose of forming our opinion on the financial statements that collectively comprise the District's basic financial statements. The other supplementary information, as listed in the table of contents, is presented for purposes of additional analysis and is not a required part of the basic financial statements.

The other supplementary information, as listed in the table of contents, is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the other supplementary information as listed in the table of contents is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

**Other Matters.** The District has not presented a Management's Discussion and Analysis that the Governmental Accounting Standards Board has determined is necessary to supplement, although not required to be part of, the basic financial statements in accordance with accounting principles generally accepted in the United States of America; and therefore does not affect our opinion thereon.

**Other Reporting Required by Government Auditing Standards.** In accordance with *Government Auditing Standards*, we have also issued our report dated November 1, 2018, on our consideration of the District's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the District's internal control over financial reporting and compliance.



Las Vegas, Nevada  
November 1, 2018

## **Basic Financial Statements**

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**Big Bend Water District**  
**Statement of Net Position**  
**June 30, 2018**

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**ASSETS**

Current assets:

Cash and cash equivalents, restricted	\$ 1,770,966
Cash and cash equivalents, unrestricted	875,381
Accounts receivable, net of allowance for doubtful accounts	499,035
Prepaid expenses	10,674
	<u>3,156,056</u>

Noncurrent assets:

Capital assets, net of accumulated depreciation:	
Structures and other improvements	52,443,988
Equipment	2,942,609
Accumulated depreciation	(27,666,352)
	<u>27,720,245</u>

Total assets	<u>30,876,301</u>
--------------	-------------------

**DEFERRED OUTFLOW OF RESOURCES**

Deferred amount - other government	<u>172,942</u>
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Total assets and deferred outflow of resources	<u>\$ 31,049,243</u>
--	----------------------

**LIABILITIES**

Current liabilities:

Interest payable	\$ 49,906
Customer deposits	61,044
General obligation bonds payable, current portion	420,947
	<u>531,897</u>

Noncurrent liabilities:

Due to other government	1,772,059
General obligation bonds payable, net of current portion	2,703,459
	<u>4,475,518</u>

Total liabilities	<u>5,007,415</u>
-------------------	------------------

**DEFERRED INFLOW OF RESOURCES**

Deferred amount - other government	<u>9,485</u>
------------------------------------	--------------

Total liabilities and deferred inflow of resources	<u>5,016,900</u>
--	------------------

**NET POSITION**

Invested in capital assets, net of related debt	24,595,839
Restricted for acquisition or improvement of capital assets	1,770,966
Unrestricted	(334,462)
	<u>(334,462)</u>

Total net position	<u>26,032,343</u>
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Total liabilities, deferred inflow of resources, and net position	<u>\$ 31,049,243</u>
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**Big Bend Water District**  
**Statement of Revenues, Expenses**  
**and Changes in Net Position**  
**For the Fiscal Year Ended June 30, 2018**

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<b>OPERATING REVENUES</b>	
Water sales	\$ 3,562,193
<b>OPERATING EXPENSES</b>	
Salaries and wages	1,029,162
Employee benefits	472,947
Services and supplies	1,943,387
Depreciation	1,390,492
Total operating expenses	4,835,988
<b>OPERATING LOSS</b>	(1,273,795)
<b>NON-OPERATING REVENUES (EXPENSES)</b>	
Interest and investment income	32,760
Interest expense	(102,046)
Total non-operating revenues (expenses)	(69,286)
<b>LOSS BEFORE CONTRIBUTIONS</b>	(1,343,081)
<b>CONTRIBUTIONS</b>	
Capital contributions	1,078,388
<b>CHANGE IN NET POSITION</b>	(264,693)
<b>NET POSITION</b>	
Beginning of the year	26,394,851
Prior period adjustment of liability for postemployment benefits other than pension	(97,815)
Beginning of the year, as adjusted	26,297,036
<b>NET POSITION, END OF YEAR</b>	<u><u>\$ 26,032,343</u></u>

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**Big Bend Water District**  
**Statement of Cash Flows**  
**For the Fiscal Year Ended June 30, 2018**

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**CASH FLOWS FROM OPERATING ACTIVITIES**

Cash received from customers	\$ 3,441,392
Cash paid for employees and benefits	(1,441,710)
Cash paid for services and supplies	<u>(1,942,880)</u>
Net cash provided by operating activities	<u>56,802</u>

**CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES**

Capital asset acquisitions	(36,569)
Capital contributions	1,078,388
Repayment of debt:	
Principal	(407,814)
Interest	<u>(108,560)</u>
Net cash provided by capital and related financing activities	<u>525,445</u>

**CASH FLOWS FROM INVESTING ACTIVITIES**

Interest and investment income	<u>32,760</u>
--------------------------------	---------------

**NET INCREASE IN CASH AND CASH EQUIVALENTS** 615,007

**CASH AND CASH EQUIVALENTS**

Beginning of the year	<u>2,031,340</u>
End of the year	<u><u>\$ 2,646,347</u></u>

**RECONCILIATION OF OPERATING LOSS TO NET CASH PROVIDED BY OPERATING ACTIVITIES**

Operating loss	\$ (1,273,795)
Adjustments to reconcile operating loss to net cash provided by operating activities:	
Depreciation	1,390,492
(Increase) decrease in operating assets:	
Accounts receivable	(127,742)
Prepaid expenses	507
Deferred amount - other government	(115,729)
Increase (decrease) in operating liabilities:	
Customer deposits	6,941
Due to other government	<u>176,128</u>
Net cash provided by operating activities	<u><u>\$ 56,802</u></u>

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# **Notes to Basic Financial Statements**

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**Big Bend Water District**  
**Notes to Basic Financial Statements**  
**For the Fiscal Year Ended June 30, 2018**

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**Note 1. Summary of Significant Accounting Policies**

**The Reporting Entity**

The Big Bend Water District (District) was established in 1983 under the provisions of Nevada Revised Statutes (NRS or Nevada Statutes) 318 for the purpose of obtaining and distributing water in Laughlin, Nevada. Under the 1922 Colorado River Compact, the State of Nevada is allocated 300,000 acre feet per year (AFY) of Colorado River water, from which the District obtains water for distribution under a Colorado River water delivery contract, which provides the District with 10,000 AFY of Colorado River water. An additional 5,352 AFY of Colorado River water is allocated to the District under a cooperative agreement. Historically, the District has utilized approximately 5,000 of its 15,352 total available AFY of Colorado River water. The District currently provides potable water service in Laughlin, Nevada, to a population of approximately 9,000 to 10,000.

The Clark County Board of Commissioners serves as the District's Board of Trustees (the Board); and therefore, the District is included within the Clark County, Nevada Comprehensive Annual Financial Report as a discretely presented component unit. For purposes of these financial statements, the District is the reporting entity.

In evaluating how to define the financial reporting entity, management considered all potential component units using standards prescribed under Governmental Accounting Standards Board (GASB) Statement No. 61, *The Financial Reporting Entity: Omnibus an amendment of GASB Statements No. 14 and No. 34*. Component units would include any legally separate organizations for which the Board appoints a voting majority of the organization's governing body and 1) is able to impose its will on that organization, or 2) there is a potential for the organization to provide specific financial benefits to, or impose specific burdens on the District. Based on these criteria, no component units or other reportable organizations were identified.

The Board appoints an operating agent to manage the day-to-day operations of the District. The Las Vegas Valley Water District (LVVWD) was appointed to be the District's operating agent beginning in September 2008. Prior to this appointment, the District's operating agent was the Clark County Water Reclamation District (CCWRD).

LVVWD was created under a special act of the State of Nevada Legislature in 1947 for the purpose of obtaining and distributing water primarily in the Las Vegas valley, which includes the metropolitan area of Clark County and the City of Las Vegas. LVVWD's Comprehensive Annual Financial Report (CAFR) can be obtained by writing to:

Chief Financial Officer  
Las Vegas Valley Water District  
1001 South Valley View Boulevard  
Las Vegas, Nevada 89153

In 1954, CCWRD was created under the provisions of NRS 318 (as the Clark County Sanitation District) for the purpose of providing sewer services to the unincorporated areas of Clark County. CCWRD's CAFR can be obtained by writing to:

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**Big Bend Water District**  
**Notes to Basic Financial Statements (continued)**  
**For the Fiscal Year Ended June 30, 2018**

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Financial Services Manager  
Clark County Water Reclamation District  
5857 East Flamingo Road  
Las Vegas, Nevada 89122

During the year ended June 30, 2018, LVVWD paid all operating expenses on behalf of the District and billed the District for such expenses.

The District has no employees of its own; and therefore, during the year ended June 30, 2018, all District operating activities were performed by LVVWD employees. Consequently, any financial reporting requirements regarding employees utilized by the District including, but not limited to, reporting on post employment benefits and pensions can be found in LVVWD's CAFR.

In 1991, the Southern Nevada Water Authority (SNWA), a political subdivision of the State of Nevada, was created under the provisions of NRS 277 and by a cooperative agreement among the District, LVVWD, CCWRD, the City of Boulder City, the City of Henderson, the City of Las Vegas, and the City of North Las Vegas (member agencies). SNWA's primary functions are to secure additional supplies of water and effectively manage existing supplies of water on a regional basis through the cooperative action of the member agencies. The cooperative agreement was amended in 1994 and 1996. SNWA is governed by a seven-member board of directors, comprised of one director from each member agency. LVVWD is also the operating agent for SNWA, and LVVWD's General Manager and Chief Financial Officer are also SNWA's General Manager and Chief Financial Officer, respectively.

SNWA has the power to periodically assess the member agencies directly for operating and capital costs and for the satisfaction of any liabilities imposed against SNWA. The District and other members do not have an express claim to the resources of SNWA except that, upon termination of the cooperative agreement, any assets remaining after payment of all obligations shall be returned to the contributing member agencies. For this reason, the District records capital contributions to SNWA as an operating expense. SNWA's CAFR can be obtained by writing to:

Chief Financial Officer  
Southern Nevada Water Authority  
1001 South Valley View Boulevard  
Las Vegas, Nevada 89153

#### **Basic Financial Statements**

The government-wide/proprietary fund financial statements include a statement of net position, a statement of revenues, expenses and changes in net position and a statement of cash flows, and present information for the District's nonfiduciary activities, which consist solely of business-type activities that are accounted for in a single proprietary (enterprise) fund. The District does not currently maintain any governmental or fiduciary fund types.

#### **Measurement Focus, Basis of Accounting, and Financial Statement Presentation**

The government-wide/proprietary fund financial statements are reported on the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of the related cash flows. In this regard, the District's operations are accounted for in a manner similar to a private business enterprise, where the intent of the governing body is that the costs of providing goods and services to customers on a continuing basis are financed or recovered primarily through user charges, and its financial measurement focus is on determination of net income, financial position, and cash flows.

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**Big Bend Water District**  
**Notes to Basic Financial Statements (continued)**  
**For the Fiscal Year Ended June 30, 2018**

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The District adheres to all applicable financial accounting and reporting standards of the GASB.

Proprietary funds distinguish between operating and non-operating revenues and expenses. Operating revenues and expenses generally result from providing services, and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. The District's primary operating revenue is charges for services (water sales). Operating expenses include the costs associated with the water sales, administrative expenses, and depreciation. All revenues and expenses not directly related to providing services, and producing and delivering goods are reported as non-operating revenues and expenses. Although capital contributions are reported separately, they are considered to be non-operating revenues.

When both restricted and unrestricted resources are available, it is the District's policy to use restricted resources first, then unrestricted resources as needed.

**Assets, Liabilities, and Net Assets**

**Cash and Cash Equivalents**

The District's cash on hand, demand deposits, and short-term investments with original maturities of three months or less from the date of acquisition are considered to be cash and cash equivalents.

At June 30, 2018, all District cash and cash equivalents were deposited with LVVWD, the District's operating agent, in a manner similar to an external investment pool. The amounts deposited with LVVWD are sufficiently liquid to permit withdrawals in the form of cash at any time without prior notice or penalty; and therefore, they are deemed to be cash equivalents (Note 3). Cash and cash equivalents deposited with financial institutions are partially insured by the FDIC and are further secured by collateral pledged by individual financial institutions with the State of Nevada, Office of the State Treasurer, in the Pooled Collateral for Deposits Program.

**Receivables**

At June 30, 2018, accounts receivable consist primarily of unbilled and/or uncollected water sales, which are expected to be collected within one year.

**Capital Assets**

Capital assets include structures, improvements, and equipment and are recorded at cost where historical records are available and, if no historical records exist, at estimated cost (Note 3). Donated capital assets, if any, are valued at their estimated fair value on the date received. Capital assets are defined as assets with an initial cost of at least \$10,000 and an estimated useful life of three years. The cost of normal maintenance and repairs that do not add to the value of the asset or materially extend the asset's functionality are not capitalized. Major outlays for capital assets and improvements are capitalized as the projects are constructed. Interest incurred during the construction of an asset is included as part of the capitalized value of the asset. No interest expense was capitalized for the year ended June 30, 2018. Capital assets are depreciated using the straight-line method over the following estimated useful lives:

<u>Assets</u>	<u>Years</u>
Structures and improvements	5-50
Equipment	3-10

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**Big Bend Water District**  
**Notes to Basic Financial Statements (continued)**  
**For the Fiscal Year Ended June 30, 2018**

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**Capital Contributions**

Capital contributions consist primarily of facilities connection charge (\$481,470) and shared sales tax revenue (\$590,061), which is restricted for the acquisition, relocation, improvement or construction of property, facilities, or equipment. No distinction is made between property acquired through capital contributions and property purchased from operating funds.

**Net Position**

Net position is displayed in three components: (1) Invested in capital assets, net of related debt represents the District's equity interest in its capital assets. It reflects the cost of capital assets less accumulated depreciation and less the outstanding principal of related debt, excluding unspent proceeds. (2) Restricted net position represents the balance that is reserved for the acquisition, relocation, improvement or construction of property, facilities, or equipment. (3) Unrestricted net position represents the remaining fund equity balance that is available to support District operations and capital asset acquisition/construction.

**Use of Estimates**

Timely preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates that affect reported amounts. These estimates may require revision in future periods.

**Prior Period Adjustment**

The District adopted GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*, effective for fiscal year 2018. Although the District is not subject to the implementation of the GASB Statement No. 75, the District has an obligation to the LVVWD for its proportionate share of that liability. The cumulative effect of applying the new Statement is reported by the LVVWD as a restatement of the beginning net position in the initial period of implementation. The District has recorded their corresponding liability in this same manner.

Beginning net position as previously reported on June 30, 2017	\$26,394,851
Prior period adjustment	<u>(97,815)</u>
Net position as restated on July 1, 2017	<u>\$26,297,036</u>

**Note 2. Stewardship, Compliance and Accountability**

**New Accounting Pronouncements**

In November 2016, the GASB issued Statement No. 83, *Certain Asset Retirement Obligations*, which is effective for fiscal years beginning after June 15, 2018. Earlier application is encouraged. The objective of this Statement is to provide financial statement users with information about asset retirement obligations that were not addressed in GASB standards by establishing uniform accounting and financial reporting requirements for these obligations. The District is currently evaluating how the adoption of Statement No. 83 will affect the District's financial position, results of operation or cash flow.

In January 2017, the GASB issued Statement No. 84, *Fiduciary Activities*, which is effective for fiscal years beginning after December 15, 2018. Earlier application is encouraged. The principal objective of this Statement is

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**Big Bend Water District**  
**Notes to Basic Financial Statements (continued)**  
**For the Fiscal Year Ended June 30, 2018**

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to enhance the consistency and compatibility of fiduciary activity reporting by state and local governments. This Statement also is intended to improve the usefulness of fiduciary activity information primarily for assessing the accountability of governments in their roles as fiduciaries. The District does not expect the adoption of Statement No. 84 to affect the District's financial position, results of operation or cash flow.

In June 2017, the GASB issued Statement No. 87, *Leases*, which is effective for fiscal years beginning after December 15, 2019. Earlier application is encouraged. The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases; enhancing comparability of financial statements between governments; and also enhancing the relevance, reliability (representational faithfulness), and consistence of information about the leasing activities of governments. The District is currently evaluating how the adoption of Statement No. 87 will affect the District's financial position, results of operation or cash flow.

In March, 2018, the GASB issued Statement No. 88, *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Replacements*, which is effective for fiscal years beginning after June 15, 2018. Earlier application is encouraged. The primary objective of this Statement is to improve the information that is disclosed in notes to government financial statements related to debt, including direct borrowings and direct placements. It also clarifies which liabilities governments should include when disclosing information related to debt. The District is currently evaluating how the adoption of Statement No. 88 will affect the District's financial position, results of operation or cash flow.

In June 2018, the GASB issued Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*, which is effective for fiscal years beginning after December 15, 2019. Earlier application is encouraged. The objectives of this statement are (1) to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and (2) to simplify accounting for interest cost incurred before the end of a construction period. The District intends to adopt the requirements of Statement No. 89 beginning with fiscal year 2019 and will apply the requirements of this Statement prospectively, as required.

Other recent accounting standards issued by the GASB are not believed to have an effect on the District's present or future financial position, results of operation, or cash flows.

### **Note 3. Detailed Balance Sheet Information**

#### **Cash, Cash Equivalents and Investments**

At June 30, 2018, all of the District's cash and cash equivalents were deposited with LVVWD, the District's operating agent, in a manner similar to an external investment pool. The amounts deposited with LVVWD are sufficiently liquid to permit withdrawals in the form of cash at any time without prior notice or penalty; and therefore, they are deemed to be cash equivalents. The District's restricted cash is restricted for the acquisition, relocation, improvement or construction of property, facilities, or equipment.

LVVWD invests monies held on behalf of the District through a pooling of monies, which are invested as a whole and not as a combination of monies. In this manner, LVVWD is able to invest the monies at a higher interest rate for a longer period of time. Due to the nature of the pooling, it is not possible to separately identify any specific investment as being that of the District. Instead, the District owns a proportionate share of each investment. Investment income is apportioned monthly based on the average daily cash balance of the component for the month.

The fair value of the District's position in the pooled monies is equal to the value of the District's proportionate share of the pooled monies.

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**Big Bend Water District**  
**Notes to Basic Financial Statements (continued)**  
**For the Fiscal Year Ended June 30, 2018**

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LVVWD, and therefore, the District, has a formal investment policy that is designed to ensure conformity with applicable NRS and to limit exposure to investment risks. The NRS do not specifically require collateral for demand deposits, but do specify that collateral for time deposits may be of the same type as those described for permissible investments under NRS. The formal investment policy places no limits on the amount that can be invested in any one issuer beyond that stipulated by the NRS.

To minimize exposure to concentrations of credit risk, the formal investment policy limits investments to obligations of the United States (U.S.) Treasury and U.S. agencies (not to exceed ten years maturity from the date of purchase) and commercial paper issued by a corporation organized and operating in the U.S. having an "A-1" or "P-1" rating by a nationally recognized rating service (not to exceed 270 days maturity from the date of purchase and 20% of total investments).

The District's share of pooled cash consists of interest-bearing demand deposits.

#### **Capital Assets**

For the fiscal year ended June 30, 2018, changes in capital assets were as follows:

	Balance July 1, 2017	Additions	Retirements	Balance June 30, 2018
Capital assets being depreciated:				
Structures and other improvements	\$ 52,407,418	\$ 36,570	\$ -	\$ 52,443,988
Equipment	2,942,609	-	-	2,942,609
Total capital assets being depreciated	55,350,027	36,570	-	55,386,597
Less accumulated depreciation	(26,275,860)	(1,390,492)	-	(27,666,352)
Capital assets being depreciated, net	29,074,167	(1,353,922)	-	27,720,245
Total capital assets, net	\$ 29,074,167	\$ (1,353,922)	\$ -	\$ 27,720,245

#### **Due to Other Government**

Effective July 1, 2007, the LVVWD implemented the provisions of GASB Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*. Additionally, effective July 1, 2017, the LVVWD implemented the provisions of GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*. As a result of these implementations, the LVVWD allocated a portion of the costs related to postemployment benefits other than pensions (OPEB) to the District. As of June 30, 2018, allocated OPEB costs were \$177,298. Effective July 1, 2014, the LVVWD implemented provisions of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions - An Amendment of GASB Statement No. 27*. As a result of this implementation, the LVVWD allocated a portion of the costs related to net pension liability to the District. As of June 30, 2018, the allocated net pension liability cost is \$1,594,761.



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**Big Bend Water District**  
**Notes to Basic Financial Statements (continued)**  
**For the Fiscal Year Ended June 30, 2018**

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**Long-term Obligations**

The District issues general obligation bonds to provide funds for the improvement, acquisition or construction of major capital assets. These bonds are the direct obligation of the District.

At June 30, 2018, general obligation bonds outstanding were as follows:

<u>Bond issue series</u>	<u>Maturity date</u>	<u>Original amount</u>	<u>Interest rate</u>	<u>Balance June 30, 2018</u>
2003	January 1, 2025	\$ 4,000,000	3 19%	\$ 1,694,845
2004	July 1, 2024	<u>3,197,729<sup>(1)</sup></u>	3 20%	<u>1,429,561</u>
		<u>\$ 7,197,729</u>		<u>\$ 3,124,406</u>

<sup>(1)</sup> The 2004 series bonds were authorized in the aggregate principal amount of \$6,000,000 for the purpose of expanding the District's water delivery system. The State of Nevada agreed to finance this expansion project by purchasing, at par, up to \$6,000,000 of the District's general obligation bonds as the project is completed. At June 30, 2018, the original amount of 2004 series bonds that had been purchased by the State of Nevada totaled \$3,197,729.

At June 30, 2018, annual debt service requirements to maturity were as follows:

<u>Years ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2019	\$ 420,947	\$ 96,476	\$ 517,423
2020	434,503	82,920	517,423
2021	448,495	68,928	517,423
2022	462,938	54,485	517,423
2023	477,846	39,578	517,424
2024 - 2025	<u>879,677</u>	<u>32,495</u>	<u>912,172</u>
	<u>\$ 3,124,406</u>	<u>\$ 374,882</u>	<u>\$ 3,499,288</u>

For the fiscal year ended June 30, 2018, changes in long-term obligations were as follows:

<u>Bond issue series</u>	<u>Balance July 1, 2017</u>	<u>Reductions</u>	<u>Balance June 30, 2018</u>	<u>Due within one year</u>
2003	\$ 1,907,749	\$ (212,904)	\$ 1,694,845	\$ 219,750
2004	<u>1,624,471</u>	<u>(194,910)</u>	<u>1,429,561</u>	<u>201,197</u>
	<u>\$ 3,532,220</u>	<u>\$ (407,814)</u>	<u>\$ 3,124,406</u>	<u>\$ 420,947</u>

**Debt Covenants**

Management believes that the District has complied with all legal requirements, limitations, and restrictions imposed by debt covenants. The District is required to set user charges (primarily water rates) at levels sufficient to cover all operating and maintenance expenses (excluding depreciation), all debt service requirements, and amounts pertaining to the water system, and to comply with the requirements of the Safe Drinking Water Act and 40 CFR Part 31. Other requirements of debt covenants include the District foregoing any action or not omitting to take any action that would cause paid bond interest to lose its federal tax exempt status.

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**Big Bend Water District**  
**Notes to Basic Financial Statements (continued)**  
**For the Fiscal Year Ended June 30, 2018**

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**Note 4. Deferred Outflows and Inflows of Resources**

In fiscal year 2016, the LVVWD implemented GASB Statement No. 68, *Accounting and Financial Reporting for Pensions*, which resulted in the recognition of deferred amounts related to its pension. In fiscal year 2018, the LVVWD implemented GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*, which resulted in the recognition of deferred amounts related to its postemployment benefits other than pensions. The District's deferred amounts are its recognition of its share of the LVVWD's deferrals described above. As of June 30, 2018, deferred outflows and inflows of resources due to related party were \$172,942 and \$9,485, respectively.

**Note 5. Risk Management**

The District's operating activities are comprised primarily of obtaining and distributing water in Laughlin, Nevada; and therefore, realization of the District's receivables and its future operations could be affected by an adverse change in the economic conditions in the area.

The District is exposed to various risks of loss related to torts; theft of, or damage to, or destruction of assets; errors and omissions; injuries to employees; and natural disasters. The District maintains a risk management program to assess coverage of potential risks of loss. Beginning in September 2008, the District was included in LVVWD's risk management programs and as such assumes the same risks and receives the same benefits from such programs as LVVWD.

LVVWD manages and finances these risks through a combination of purchasing commercial insurance and self-assumption of some risk. In 2003 the District implemented a self-insurance program for its automobile and general liability exposure. The District assumes the first \$1 million for any one claim and purchases \$30 million of excess liability insurance. The District also self-insures its fleet of vehicles for any damage. The District purchases property insurance covering its buildings, contents and equipment from the commercial insurance market. This program has a blanket limit of \$500 million for all locations with a \$1 million deductible for damage to District properties except earthquake and flood which have limits of \$100 million and \$50 million respectively, with a deductible of \$100,000. This program also provides terrorism insurance for all locations with a blanket limit of \$500 million for all terrorist acts.

LVVWD settlements and awards have not exceeded insurance coverage in each of the past three years.

GASB Statement 10, *Accounting and Financial Reporting for Risk Financing and Related Insurance Issues*, requires that for retained risks a liability for claims be reported if information available prior to issuance of the financial statements indicates it is probable that a liability has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated. In addition, there are also situations in which incidents occur before the balance sheet date, but claims are not reported or asserted when the financial statements are prepared. These incurred but not reported claims have been estimated based upon the District's past experience and adjusted for current trends. At June 30, 2018, the District had no significant retained risks; and therefore, has no accrued liability for retained risks. Information regarding LVVWD's retained risks can be found in LVVWD's CAFR, which can be obtained by writing to:

Chief Financial Officer  
Las Vegas Valley Water District  
1001 South Valley View Boulevard  
Las Vegas, Nevada 89153

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**Big Bend Water District**  
**Notes to Basic Financial Statements (continued)**  
**For the Fiscal Year Ended June 30, 2018**

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**Note 6. Contingent Liabilities**

In the ordinary course of its operations, claims are filed against the District. It is the opinion of management that these claims will not have any material adverse effect on the District's financial position, results of operation, or cash flows.

The District does not accrue for estimated future legal and defense costs, if any, to be incurred in connection with outstanding or threatened litigation and other disputed matters but rather, records such as period costs when services are rendered.

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## **Other Supplementary Information**

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**Big Bend Water District**  
**Statement of Revenues, Expenses**  
**and Changes in Net Position**  
**For the Fiscal Year Ended June 30, 2018**  
**Actual and Budget**

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	<b>FY 2018 Twelve Months Actual</b>	<b>FY 2018 Annual Budget</b>
<b>OPERATING REVENUES</b>		
Water sales	\$ 3,562,193	\$ 3,195,438
Total operating revenues	<u>3,562,193</u>	<u>3,195,438</u>
<b>OPERATING EXPENSES</b>		
Salaries and wages	1,502,109	1,940,578
Services and supplies	1,943,387	2,187,954
Depreciation	1,390,492	1,300,000
Total operating expenses	<u>4,835,988</u>	<u>5,428,532</u>
<b>OPERATING LOSS</b>	<u>(1,273,795)</u>	<u>(2,233,094)</u>
<b>NON-OPERATING REVENUES (EXPENSES)</b>		
Interest and investment income	32,760	8,874
Interest expense	(102,046)	(109,609)
Total non-operating revenues (expenses)	<u>(69,286)</u>	<u>(100,735)</u>
<b>LOSS BEFORE CONTRIBUTIONS</b>	<u>(1,343,081)</u>	<u>(2,333,829)</u>
<b>CONTRIBUTIONS</b>		
Capital contributions	<u>1,078,388</u>	<u>524,835</u>
<b>CHANGE IN NET POSITION</b>	<u>\$ (264,693)</u>	<u>\$ (1,808,994)</u>

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## **Additional Auditors' Report**

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**INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL  
OVER FINANCIAL REPORTING AND ON COMPLIANCE AND  
OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL  
STATEMENTS PERFORMED IN ACCORDANCE WITH  
GOVERNMENT AUDITING STANDARDS**

Board of Trustees  
Big Bend Water District  
Las Vegas, NV

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the Big Bend Water District (the District), a discretely presented component unit of Clark County, Nevada, as of and for the year ended June 30, 2018, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents, and have issued our report thereon dated November 1, 2018.

**Internal Control over Financial Reporting.** In planning and performing our audit of the basic financial statements, we considered the District's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the basic financial statements, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, we do not express an opinion on the effectiveness of the District's internal control.

A *deficiency* in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the District's basic financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

**Compliance and Other Matters.** As part of obtaining reasonable assurance about whether the District's basic financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of basic financial statement amounts, including whether the funds established by the District, as listed in Nevada Revised Statutes (NRS) 354.624 (5)(a)(1 through 5), complied with the express purposes required by NRS 354.6241. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

We noted certain matters that we reported to the District in a separate letter dated November 1, 2018.

**Purpose of this Report.** The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the District's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the District internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

*Piercy Boud Taylor, KM*

Las Vegas, Nevada  
November 1, 2018