

**SECOND MEMORANDUM OF
AGREEMENT CONCERNING THE
UPPER COLORADO RIVER BASIN
FUND**

This Second Memorandum of Agreement (MOA 2) is entered into by and among the States of Colorado, New Mexico, Utah and Wyoming (collectively, the Upper Division States, or States); the Colorado River Energy Distributors Association, Inc. (CREDA); the Department of the Interior, Bureau of Reclamation (Reclamation), acting by and through the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388), and acts amendatory thereof and supplemental thereto, particularly Section 5 of the Colorado River Storage Project Act of April 11, 1956 (43 U.S.C. §§ 620d); and the Department of Energy, Western Area Power Administration (WAPA) (collectively the Parties).

RECITALS

The Recitals set forth below are material facts that are relevant to, and form the basis for, the agreement set forth herein.

I. Parties.

- A. State of Colorado. Pursuant to the executive authority of the Executive Director of the Department of Natural Resources of the State of Colorado, Rebecca Mitchell was appointed on July 5, 2017, the Director of the Colorado Water Conservation Board, and is authorized to negotiate and enter into this agreement.

Section 37-60-106, subsections (e), (h), (i), and (k) of the Colorado Revised Statutes empowers and charges the Colorado Water Conservation Board "[t]o cooperate with the United States and the agencies thereof, and with other states for the purpose of bringing about the greater utilization of the water of the state of Colorado...; ... [t]o investigate and assist in formulating a response to the plans, purposes, procedures, requirements, laws, proposed laws, or other activities of the Federal government and other states which affect or might affect the use or development of the water resources of this state; [t]o confer with and appear before the officers, representatives, boards, bureaus, committees, commissions, or other

agencies of other states, or of the Federal government, for the purpose of protecting and asserting the authority, interests, and rights of the state of Colorado and its citizens with respect to the waters of the interstate streams in this state; ... [and] [i]n general, to take such action and have such powers as are incidental to the foregoing specific provisions and to the general purposes of this article."

- B. State of New Mexico. Pursuant to NMSA 1978, § 72-14-3, the New Mexico Interstate Stream Commission is authorized to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of the State of New Mexico, interstate or otherwise. The Interstate Stream Commission also is authorized to institute or cause to be instituted in the name of the State of New Mexico any and all negotiations and/or legal proceedings as in its judgment are necessary to fulfill its statutory mandate. Through action at its June 18, 2020 meeting, the Interstate Stream Commission authorized the Secretary of the Interstate Stream Commission to sign this MOA 2.

- C. State of Utah. The Division of Water Resources (DWR) is the water resource authority for the State of Utah. Utah Code Ann. § 73-10-18. The Utah Department of Natural Resources Executive Director (Department), with the concurrence of the Utah Board of Water Resources (Board), appoints the DWR Director (Director). § 79-2-204(1)(a). The Board makes DWR policy. § 73-10-1.5. The Board develops, conserves, protects and controls Utah waters, § 73-10-4(1), and, in cooperation with the Department and the Governor, supervises administration of interstate compacts, § 73-10-4(1)(d), such as the Colorado River Compact, §§ 73-12a-1 through 3, and the Upper Colorado River Basin Compact, § 73-13-10. The Board, with Department and Gubernatorial approval, appoints a Utah Interstate Stream Commissioner, § 73-10-3, currently the DWR Director, to represent Utah in interstate conferences to administer interstate compacts. §§ 73-10-3 and 73-10-4. These delegations of authority authorize the Utah Interstate Stream Commissioner/DWR Director to sign this document. He acts pursuant to a Board resolution, acknowledged by the Department, dated June 18, 2020.

- D. State of Wyoming. Wyoming's Governor has discretion under Wyoming Statute § 9-1-210 to accept Federal assistance on behalf of the State of Wyoming which authorizes him as Wyoming's legally constituted authority with regard to the Upper Colorado River Basin Fund and this MOA 2. In signing this MOA 2, the Governor of Wyoming intends that this MOA 2 be mutually and equally binding between and among the Parties.

- E. Colorado River Energy Distributors Association, Inc. CREDA is a non-profit Arizona and Colorado corporation established in 1978 to represent its members in dealing with Colorado River Storage Project (CRSP) resource availability and affordability issues. CREDA represents its members in dealing with the Reclamation and the WAPA. CREDA's members are all non-profit organizations, serving over four million electric consumers in the six western States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming. The Executive Director of CREDA is authorized to execute this MOA 2 pursuant to resolution adopted by the CREDA Board of Directors on April 2, 2020.

- F. U.S. Department of the Interior, Bureau of Reclamation (Reclamation). Reclamation, through authorities provided to the Secretary of the Interior by Reclamation law including the Colorado River Storage Project Act of 1956 and subsequent amendments (CRSPA), is authorized to operate and maintain CRSP and participating project facilities. Therefore, Reclamation is authorized to enter into this MOA 2.

- G. U.S. Department of Energy, Western Area Power Administration (WAPA). WAPA, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388); February 25, 1905 (33 Stat. 814); July 3, 1952 (66 Stat. 325); April 11, 1956 (70 Stat. 105); August 4, 1977 (91 Stat. 565); and the Acts amendatory or supplementary to the foregoing Acts, acting by and through the Colorado River Storage Project Manager, is authorized to execute this MOA 2.

II. Background.

- A. On April 11, 1956, Congress enacted the CRSPA, 43 U.S.C. § 620, et seq. Among the purposes of the CRSPA is the "comprehensive development of the water resources of the Upper Colorado River Basin."

- B. Section 5(e) of the CRSPA: 1) authorizes the use of power revenues for repayment of construction costs of participating projects or parts of such projects in the State to which such revenues are apportioned, including to aid in the development and repayment of certain irrigation costs of participating projects within the Upper Colorado River Basin (aid-to-irrigation); 2) apportions revenues for aid-to-irrigation repayment to each of the Upper Division States as follows:

46.0% to the State of Colorado; 21.5% to the State of Utah; 15.5% to the State of Wyoming; and 17.0% to the State of New Mexico; and, 3) allows an Upper Division State to consent to the use of revenues collected pursuant to Section 5(e) and apportioned to that state to be used in another Upper Division State, 43 U.S.C. § 620d(e). The application of apportionment has resulted in the collection of revenues for aid-to-irrigation beyond what was necessary to repay power's share of CRSP participating costs allocated to irrigation.

- C. Section 5(c) of the CRSPA (43 U.S.C. § 620d(c)) states, in part, that revenues collected and credited to the Basin Fund shall be available, without further appropriation, for defraying the costs of operation, maintenance, and replacements of, and emergency expenditures for, all facilities of the Colorado River Storage Project and participating projects.
- D. Through its firm power rate, WAPA collects revenues for the purposes established in Section 5 of the CRSPA. All such revenues collected by WAPA are and shall remain Federal revenues.
- E. On January 24, 2011, the Parties entered into a Memorandum of Agreement (MOA), providing the framework for the expenditure of a portion of collected power revenues defined under Section 5(c) of the CRSPA. The term and amount of this original MOA was from 2011 to 2025, with an anticipated average annual collection of \$11.5 million for a total of \$161 million from power revenues.
- F. This MOA 2 represents a combination and extension of the original MOA and this MOA 2. This MOA 2 preserves revenues to be collected pursuant to the original MOA between October 1, 2020, and September 30, 2025, in the total amount of \$57,500,000, and adds an additional \$187,393,576 to be collected beginning on October 1, 2020, and continuing through September 30, 2037, under this MOA 2, for an average annual collection of revenues of \$14,405,504 beginning in October 2020. The total amount of MOA Revenues to be collected and transferred pursuant to this MOA 2 shall be \$244,893,576.
- G. The Parties desire to enter into this MOA 2 to provide additional revenues to further the purposes currently

authorized in the CRSPA, 43 U.S.C. § 620d(c)(1).

- H. This MOA 2 does not: 1) imply support for or opposition to CRSPA projects that are currently authorized; 2) prevent the Upper Division States from seeking authorization for additional projects, or from seeking appropriations for authorized projects under the CRSPA; or, 3) require or preclude cost sharing or matching funds by the Upper Division States.
- I. The Parties do not intend to seek any legislative changes to the apportionment process as it is currently described in the CRSPA.

III. Purposes.

By executing this MOA 2, the Parties intend to:

- A. Reduce the impact on the CRSP firm power rate by eliminating the collection of power revenues beyond that amount needed under Section 5(e) of the CRSPA to repay certain irrigation costs of participating projects identified in Appendix A, attached hereto.
- B. Make available to Reclamation additional revenues collected through the CRSP firm power rate for OM&R activities under Section 5(c) of the CRSPA. As part of this effort, the Parties intend to continue to implement a mechanism for collecting MOA Revenues for use by Reclamation within the Upper Colorado River Basin for the benefit of the Upper Division States. Under this MOA 2, CRSP power revenues collected by WAPA in accordance with this MOA 2 will be used by Reclamation to further the purposes of the CRSPA through application of those revenues to the costs of Projects recommended by the Upper Division States.
- C. Further the cooperative relationships among CRSP water and power beneficiaries.

DEFINITIONS

For the purposes of this MOA 2, the following terms are defined below:

1. **Administrative Costs.** Those costs related to Reclamation's MOA 2 program including costs associated with monthly expenditure reports; forms and standard operating procedures; Pre-Project Analyses and Project Approvals; monthly calls with Upper Division States; and the development and maintenance of any other activities, documents, and procedures that may further the goals of this MOA 2.
2. **Basin-wide Projects.** Those Projects throughout the Upper Colorado River Basin for which all the Upper Division States have agreed to seek funding pursuant to this MOA 2.
3. **Budgets.** Estimates and plans for expenditure of MOA Revenues and other funds for all costs and Contingencies of a Project.
4. **Colorado River Storage Project.** A Bureau of Reclamation project that includes four initial storage units: Glen Canyon, Flaming Gorge, Navajo, and the Wayne N. Aspinall Storage Unit and participating projects for which irrigation construction costs are repaid, in part, with CRSP power revenues. These participating projects are listed in the authorization paragraphs of the CRSPA and subsequent legislation, and collectively identified in this MOA 2 as CRSP or CRSPA projects.
5. **Contingency.** An amount specified in Budgets and intended to defray costs in excess of estimated amounts that may arise during the implementation of a Project.
6. **Contract Costs.** Costs identified in a procurement contract for the goods, materials, and services procured by Reclamation for the implementation and completion of a specific Project.
7. **Contributed Funds.** Any funds expended by Reclamation pursuant to this MOA 2 and made available through a contributed funds agreement (CFA), authorized under 43 U.S.C. § 395.
8. **Cost Recovery Charge (CRC).** An additional charge that may be imposed by WAPA on all delivered sustainable hydropower energy

deliveries that may, at times, be applicable when cost recovery is at risk due to low hydropower generation and high power prices.¹ A CRC is imposed when necessary to adequately maintain a sufficient cash balance in the Basin Fund.² On an annual basis, WAPA estimates availability of revenue in the Basin Fund, at the beginning and end of the fiscal year, to maintain a Basin Fund target balance for the following year, and to limit the annual loss to the Basin Fund. Once WAPA determines the amount of revenue available in the Basin Fund for anticipated expenses, it will determine if additional revenue is needed and will include this amount in the customer's firm power bill through the assessment of a CRC.^{3,4}

9. Elective Operation, Maintenance and Replacement (Elective OM&R). Activities that are not the subject of existing Reclamation operations maintenance and replacement recommendations and are limited to rehabilitation, refurbishment, rebuilding or replacement, optimization, studies, data collection, and/or modernization of an existing CRSP facility. Elective OM&R does not include new construction or the building of new facilities that would be in addition to authorized and existing CRSP facilities. Elective OM&R is limited to facilities, equipment, or data in which Reclamation has an ownership interest.
10. MOA Revenues. Power revenues that are collected by WAPA pursuant to Section V of this MOA 2 and transferred to and expended by Reclamation in accordance with Section 5(c) of the CRSPA and this MOA 2.
11. Non-Contract Costs. Non-Contract Costs mean any costs that are not expended under procurement contracts and occur as a result of Reclamation staff performing activities to implement completion of Projects, which may include, but are not limited to, those costs related to planning, environmental compliance, design, design review, procurement process, project management, inspection, and other costs associated with a specific Project.
12. Non-Federal Parties. The States of Colorado, New Mexico, Utah, and Wyoming; and CREDA.

¹ Rate Order WAPA-117, January 18, 2005.

² Rate Order WAPA-137, September 4, 2008.

³ Rate Order WAPA-117, August 15, 2005.

⁴ Rate Order WAPA-169, as may be superseded.

13. Non-MOA Funds. Funds to be used by the States for proposed and approved Projects, including but not limited to, funds from water users. These funds are not collected pursuant to the CRSPA and are not transferred to Reclamation as Contributed Funds.
14. Pre-Project Analysis. An initial “fatal flaw” review by Reclamation of proposed Projects. The review will include at a minimum the following elements: 1) Project scope; 2) all known estimated costs; 3) anticipated timetable for all known pre- and post-procurement activities; and, 4) an estimated completion date for each Project.
15. Procurement Process. Reclamation’s process governed by law, regulation, and policy for acquiring goods, materials, and services.
16. Project. Elective OM&R proposed and/or implemented under the terms of this MOA 2.
17. Project Approval. Upon submission to Reclamation by an Upper Division State of a proposed Project, or by the Upper Division States in the case of a Basin-wide Project, Reclamation may approve the proposed Project provided it is consistent with the authorities under this MOA 2 and the CRSPA.
18. Project Management Plan (PMP). A plan, for each approved Project, between Reclamation, the Upper Division State where the Project is located, and other entities as jointly determined by the proponent Upper Division State and Reclamation, in accordance with Section VI of this MOA 2.
19. Upper Colorado River Basin. Those parts of the Upper Division States of Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River system above Lee Ferry, and also all parts of said Upper Division States located outside of the drainage area of the Colorado River system which are now, or shall hereafter, be beneficially served by waters diverted from the Colorado River system above Lee Ferry.
20. Upper Colorado River Basin Fund (Basin Fund). A separate fund in the United States Treasury established pursuant to Section 5(a) of the CRSPA, 43 U.S.C 620(a).

21. Upper Colorado River Commission. An interstate administrative water agency composed of one commissioner representing each of the States of Colorado, New Mexico, Utah, and Wyoming and one commissioner representing the United States, as established pursuant to Article VIII of the Upper Colorado River Basin Compact of 1948, 63 Stat. 31.
22. Upper Division States. The States of Colorado, New Mexico, Utah, and Wyoming, as defined in Article II(c) of the Colorado River Compact and Article II(c) of the Upper Colorado River Basin Compact.

AGREEMENT

In consideration of the above recitals and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

IV. Consent to Collection and Use of Apportioned Revenues Pursuant to Section 5(e) of the CRSPA.

The Upper Division States consent, pursuant to Section 5(e) of the CRSPA, to the use of sufficient revenues apportioned and collected for each State to be used in another State for the repayment of certain irrigation costs of participating projects within the Upper Colorado River Basin (aid-to-irrigation) as identified in Appendix A, attached hereto.

The Parties intend that, as to the projects in Appendix A, the obligation to collect power revenues pursuant to Section 5(e) of the CRSPA will be met. At no time in the future will Reclamation or WAPA collect additional power revenues or include in the CRSP power repayment study any specified apportionment for those projects beyond what is reflected in WAPA's most current power repayment study for the particular projects listed in Appendix A.

V. Agreement For Collection and Use of MOA Revenues Pursuant to Section 5(c) of the CRSPA.

- A. Collection and Use of MOA Revenues.

1. WAPA will collect an average of \$14,405,504, in power revenues annually, for a total of \$244,893,576, beginning in the Federal fiscal year following approval of this MOA 2 and continuing through the term of this MOA 2. The value of \$244,893,576, represents the collection and transfer of a total of \$57,500,000, pursuant to the terms of the MOA, and collection and transfer of an additional total of \$187,393,576, pursuant to the terms of this MOA 2 (see table below).

Time Period	Annual Average MOA Revenues	Annual Average MOA Revenues collected under MOA 2	Total Annual Average Amount
October 1, 2020 – September 30, 2025	\$11,500,000	\$2,905,504	= \$14,405,504
October 1, 2025 – September 30, 2037	n/a	\$14,405,504	= \$14,405,504

2. WAPA will transfer MOA Revenues to Reclamation for the purposes of this MOA 2. WAPA shall separately account in the Basin Fund for MOA Revenues collected pursuant to this Section V.
3. Reclamation, on behalf of the Upper Division States, will use the MOA Revenues described herein to fund only those Projects that are within the authorities of Reclamation and recommended by the Upper Division States. Reclamation may also use MOA Revenues to fund Administrative Costs, as defined herein, in accordance with the terms described in Section VI.I.1.
4. Reclamation shall use MOA Revenues to fund Projects in the following percentages: Colorado, 46.0%; Utah, 21.5%; Wyoming, 15.5%; and, New Mexico, 17.0%; provided, however, that nothing herein shall prevent any Upper Division State from allowing, at its sole discretion, a share of its assigned MOA Revenues to be expended for Projects under this MOA 2 in other Upper Division States. Basin-wide Project costs will also be funded collectively by the Upper Division States subject to the percentages provided herein, unless otherwise agreed to in writing by the Upper

Division States. All MOA Revenues collected pursuant to this Section shall be used in accordance with this MOA 2 to the extent authorized by Federal law, and in accordance with Section 5(c) of the CRSPA.

5. In the event WAPA anticipates a CRC may be triggered before September 30, 2037, WAPA will notify the other Parties.

Notwithstanding the provisions of this Section V describing WAPA's power revenue collection, in any year in which a CRC is triggered, WAPA will be obligated to transfer to Reclamation only such MOA Revenues as WAPA is able to make available in that year. The Parties understand that WAPA may be unable to transfer any revenues to Reclamation in the year the CRC is triggered. Following the expiration of the CRC, WAPA shall restore the difference between the amount of revenues required under Section V.A.1. and the amount of revenues transferred to Reclamation (untransferred revenues). All untransferred revenues to be restored under this provision will be provided within four years following the expiration of a CRC; provided, however, that in the unlikely event circumstances would preclude WAPA from restoring all untransferred revenues within four years, including the triggering of another CRC in a subsequent year, WAPA will notify the Parties as soon as practicable and the Parties will consult regarding the terms and conditions necessary to restore the untransferred revenues at the earliest possible time. The total amount of MOA Revenues to be collected and transferred pursuant to this MOA 2 shall be \$244,893,576.

The Parties recognize that if a CRC is triggered, MOA Revenues may not be available for expenditure at the times or in the amounts anticipated prior to the CRC. Therefore, modifications may be required to the funding or prioritization of existing or proposed Projects. Accordingly, in the event of a CRC, Reclamation and the Upper Division States will consider modifications to the funding or prioritization of existing or proposed Projects as follows:

- a. Within 14 calendar days after a CRC is triggered, the Parties will meet to discuss the anticipated change in timing or amount of available MOA Revenues.
- b. By mutual agreement, the Parties may adjust the schedule for collection of MOA Revenues, taking into consideration, among other things, Project completion status impacts to the most recent power repayment

study, and the status of the Basin Fund.

- c. Within 14 calendar days of meeting, each Upper Division State, working with Reclamation, will re-prioritize existing or proposed Projects for funding and will consider whether MOA Revenues previously allocated to that State are sufficient to cover the expenses for re-prioritized existing or proposed Projects for that State.
- d. In the event MOA Revenues previously allocated to each Upper Division State are not sufficient to cover all expenses for re-prioritized existing or proposed Projects, the Upper Division States will collectively develop recommended modifications to the funding or prioritization of those Projects, if any, within all four of the Upper Division States and provide those recommended modifications to Reclamation. Any recommended change to the use of an Upper Division State's share of MOA Revenues in another Upper Division State shall be in accordance with Section V.A.4.
- e. In the event of any dispute or disagreement arising from the development of the recommended modifications described in (c) or (d) above, or if Reclamation wishes to modify or reject the recommended modifications, Reclamation and the Upper Division States agree to meet in good faith to jointly assess what modifications may be available and resolve any dispute or disagreement.

After considering modifications to the funding or prioritization of existing or proposed Projects as required above, Reclamation will expend MOA Revenues transferred to Reclamation by WAPA in that year along with any unexpended MOA Revenues transferred to Reclamation in previous years. In doing so, Reclamation will only expend MOA Revenues allocated to one Upper Division State in another Upper Division State after applying the provisions of Section V.A.4. of this MOA 2.

VI. MOA 2 Project Implementation.

- A. Annual Meeting. The Non-Federal Parties shall meet, at least once a year, to discuss and develop recommendations for the submission of proposed Projects and funding of Projects. All Projects shall include the estimated cost, anticipated commencement date, and a timetable for completion of each Project. If they deem it necessary, the Non-

Federal Parties may develop a prioritized list of Projects for transmittal to Reclamation.

- B. Pre-Project Analysis. To assist the Upper Division States in developing a preliminary list of proposed Projects, the Upper Division State(s) and Reclamation, at their discretion, will engage in a Pre-Project Analysis. The purpose of a Pre-Project Analysis is to consider the eligibility of a proposed Project for MOA Revenues and to identify potential significant problems associated with planning, design, funding, environmental compliance, cultural compliance, procurement, constructability, and Elective OM&R. In the event such an analysis is performed, the requesting Upper Division State(s) will coordinate with Reclamation to facilitate the prompt funding and completion of the analysis. The Parties agree that MOA Revenues will be available for such a Pre-Project Analysis, but the Upper Division State(s), in its discretion, may also utilize other funds, including Non-MOA Funds or CFA funds, for the analysis. Reclamation and the Upper Division States recognize that positive results of a Pre-Project Analysis do not guarantee Reclamation's approval of a proposed Project.

- C. Assignment of MOA Revenues. In scheduling projects for work, annual allocations of MOA Revenues may, for efficiency and by mutual consent of the Upper Division States, vary from the assignment of MOA Revenue described in Section V.A.4. of this MOA; provided, however, that the total amount of MOA Revenues over the term of this MOA shall be assigned to the Upper Division States in conformance with the assignment percentages described in Section V.A.4., unless otherwise agreed, in writing, by the Upper Division State(s) to allow a share of its assigned MOA Revenues to be expended for Projects under this MOA 2 in another Upper Division State(s).

- D. Prioritization of Proposed Projects. It is the responsibility of each Upper Division State to determine the priority of Projects within that Upper Division State. Once approved, Projects may proceed within any Upper Division State, according to its priority list, if MOA Revenues are available and as the Projects are scheduled for work, regardless of the status of Projects in any other Upper Division State.

- E. Project Submittal and Approval Process. The Upper Division States may develop and utilize standardized forms to submit Projects to Reclamation for approval. The forms will include, to the extent such information is available, results of Pre-Project Analysis, Project purpose, scope, various Budgets, and Contingencies for each Budget; allocation between MOA Revenues and Contributed Funds, if

applicable; Project stages, if applicable; estimated milestones and completion dates for each stage, and milestones for total completion of the Project itself. The process will include, but is not limited to, the following:

1. Review of Submitted Application. Reclamation will provide an opportunity for the Upper Division States to participate in the review of the submitted application as needed, including providing the proponent Upper Division State opportunities to supplement the original Project application.
2. Application Approval/Disapproval. After review of the Project application, Reclamation will approve or disapprove the proposed Project. Because MOA Revenues are Basin Fund revenues under the CRSPA, and the CRSPA authorizes Reclamation to expend funding for OM&R purposes, Reclamation cannot delegate or share its responsibility to approve the expenditure of MOA Revenues. As a result, Reclamation is solely responsible for approval of MOA Projects.

F. Project Planning Post-Approval. The Upper Division States and Reclamation agree that MOA Revenues may be used to finance Project planning following approval. The Upper Division States and Reclamation further agree that Project planning costs will be subject to a Budget, which will include a Contingency. Such a Budget and Contingency will be subject to the terms of Section VI.I. below. Under current Reclamation law and policy, which may be subject to change, any Upper Division State or stakeholders may, using Non-MOA Funds, contract with entities for services, including but not limited to, design, cultural compliance and/or environmental compliance activities; provided, however, that all such work must conform to Reclamation laws, regulations and policies.

G. Project Management Plans. As soon as practicable after a Project is approved, the proponent Upper Division State(s) and Reclamation will initiate and concur with a Project Management Plan (PMP), unless Reclamation and the Upper Division State(s) agree that a PMP is unnecessary. The Upper Division States and Reclamation also will seek concurrence from the Project sponsor, unless Reclamation and the Upper Division State(s) agree that Project sponsor concurrence is unnecessary. A template PMP is attached hereto as an example (Appendix B). PMPs may be completed in stages and updated as necessary, and will include, without limitation, the following:

1. The respective responsibilities of each entity involved in the planning, implementation and completion of the proposed Project;
2. Any requests by the proponent Upper Division State for Reclamation technical and administrative support;
3. A schedule with milestones for accomplishment of critical tasks;
4. A list of required planning, design and cultural and environmental compliance activities;
5. A Budget and Contingency; and,
6. A framework for Project activities.

Approved Basin-wide Projects will be subject to PMPs at the collective discretion of the Upper Division States.

Reclamation and the proponent Upper Division State may determine that Projects that fail to meet one or more of the identified milestones in the PMPs may not proceed to subsequent identified milestones and additional MOA Revenues may not be expended until all relevant identified milestones have been met.

H. Operating Procedures. The Parties may adopt operating procedures to more fully explain their actions pursuant to this MOA 2.

I. Costs, Contingencies, Modifications, and Contributed Funds.

1. Administrative Costs. Reclamation will provide to each Upper Division State an annual estimate of total Administrative Costs. Reclamation, through the monthly expenditure report, will provide updates to the Upper Division States reflecting the amount of remaining budgeted Administrative Costs allocated to each Upper Division State. Upon receiving the monthly expenditure report, the Upper Division States will notify Reclamation as soon as practicable of any issues. Reclamation will communicate with the Upper Division States regarding budgeting and expenditure of any Administrative Costs to all Upper Division States, or to a particular Upper Division State, or to a specific Project, as applicable.

2. Budgets.

- a. Project Budget. Each proposed Project will include a Budget

which will include, at a minimum, Administrative Costs, Non-Contract Costs, Contract Costs, and a Contingency. In the event Reclamation anticipates exceeding the originally estimated Budget for any Project, before accessing the Contingency, Reclamation will notify the affected Upper Division State of the anticipated exceedance of Budget and whether Reclamation believes the Contingency will be sufficient to complete the Project. If the Contingency will be insufficient to complete the Project, the affected Upper Division State will then consult with Reclamation as to the need for a Budget modification. Reclamation may not access the Contingency portion of a Budget without consultation and written authorization from the affected Upper Division State.

- b. Accounting Reports. Reclamation will provide accounting reports, through its monthly expenditure report, to the Upper Division States on not-less-than a monthly basis. These accounting reports will reflect all expenses charged to each approved Project with the most current information available to Reclamation. Reclamation will make staff available to review the accounting reports at the request of any of the Upper Division States. Upon request by any Upper Division State, but not less than once per year, Reclamation will provide an accounting of the amount of MOA Revenues obligated to approved Projects that have not reached the construction stage as well as the amount of MOA Revenues obligated for approved Projects.
3. Contingencies. Contingencies shall be determined by the Upper Division State where the Project is located and in consultation with Reclamation. Contingencies must be incorporated in Budgets and in Budget modification requests.
 - a. General Contingency. The total MOA Revenues apportioned and collected annually for each Upper Division State shall be subject to a fifteen percent (15%) general Contingency under this MOA 2. Use of general contingency funds by Reclamation requires consultation and subsequent written authorization from the applicable Upper Division State in accordance with the provisions of this MOA 2.
 - b. Project-Specific Contingency. A Project-specific Contingency will be determined by the Upper Division State where a Project is located, as applicable, in consultation with Reclamation, and will be included in the Budget and the PMP. Use of Project-specific contingency funds by Reclamation shall occur only upon consultation with and subsequent written approval from the applicable Upper Division State.

4. Budget Modification. At any time Reclamation determines the need for a Budget modification, Reclamation will notify the Upper Division State where the Project is located, and provide a written Budget modification request. The respective Upper Division State, in consultation with Reclamation, will determine how available funds will be expended based on the affected Upper Division State's prioritization of all of its approved Projects. If MOA Revenues are not available to that Upper Division State, the Project is subject to reductions in scope or cancellation. Reclamation and the Upper Division States will use their best efforts to avoid making decisions that could result in a permanently incomplete or inoperable Project.
5. Contributed Funds. The costs to Reclamation of performing all or a portion of any elements of a specific Project may be paid from Contributed Funds, in consultation with the proponent Upper Division State, advanced to Reclamation, pursuant to a CFA. The source of the Contributed Funds and the Project-specific terms will be provided in a CFA attached to, and incorporated into, the appropriate PMP(s). Contributed Funds will be expended by Reclamation in accordance with the terms of the CFA. The expenditure of any money or the performance of any obligation by Reclamation pursuant to a CFA shall be contingent upon the receipt of the advanced funds.

The advance of any money by any Upper Division State pursuant to a CFA shall be contingent upon the availability of appropriated or allotted State funds.

- J. Environmental and Cultural Compliance Activities. Reclamation will consult with the proponent Upper Division State regarding environmental and cultural compliance activities in accordance with Federal law, regulation, and policy. The Upper Division States and Reclamation agree that the estimated costs related to environmental and cultural compliance activities will be included in the Budget and shall include a Contingency amount. This Budget and Contingency will be outlined and made a part of the PMP.

K. Procurement for Elective OM&R.

- a. Process. Reclamation's Procurement Process will occur after

Project-specific milestones outlined in the PMP have been met as jointly determined by the proponent Upper Division State and Reclamation.

- b. States' Involvement in Procurement Process. Should an Upper Division State request to be involved in Reclamation's Procurement Process, Reclamation agrees to facilitate each Upper Division State's participation to the fullest extent possible, within the constraints of Federal law, regulation and policy.
- c. Elective OM&R. The Upper Division States and Reclamation agree that, after a determination by the proponent Upper Division State as to completion of all milestones provided in a PMP and obligation by Reclamation of available MOA Revenues for Elective OM&R activities for the Project, the proponent Upper Division State may elect to enter into a subsequent stage of the PMP. This PMP will provide a plan for management of the Project, a Budget that includes, but is not limited to, Administrative Costs, Non-Contract Costs, Contract Costs, a Contingency, and a communication plan.

VII. General Provisions.

- A. Applicability. Sections I through V, VII and VIII of this MOA 2 are applicable to all Parties. Section VI is only applicable to Reclamation, the Upper Division States, and CREDA and is not applicable to WAPA.
- B. Secretarial Discretion. The terms and conditions of this MOA 2 are subject to the Secretary of the Interior's exercise of discretion pursuant to the laws governing expenditures of Federal funds and Federal Reclamation projects generally.
- C. Consistency with Existing Law. This MOA 2 is intended to be consistent with existing law, including the Upper Colorado River Basin Compact and the CRSPA. Should any of the provisions in this MOA 2 conflict with applicable Federal law, Federal law shall control.
- D. OM&R Work Plans. CREDA will give the Upper Division

States the opportunity to participate in the review and comment on Reclamation's annual OM&R work plans submitted to CREDA under Letter Agreement No. 92-SLC-0208, dated September 24, 1992.

- E. WAPA Power Repayment Study. WAPA will update the power repayment study and complete a power rate adjustment process, if and when necessary, to implement the provisions of this MOA 2 in a timely manner.

- F. Aid-To-Irrigation Project Table. Reclamation will annually provide to the Upper Division States for their information the most current table of projected aid-to-irrigation associated with the repayment of participating projects.

- G. Resolution of Claims or Controversies. In the event of any dispute or controversy arising out of or related to this MOA 2, the Parties agree to exercise their best efforts to resolve the dispute as expeditiously as possible. The Parties shall continue to perform all of their respective obligations under this MOA 2 that are not affected by the dispute. Each Party shall bear its own costs of participation and representation in the resolution and defense of any such dispute.

- H. Reservation of Rights. Notwithstanding the terms of this MOA 2, the Parties reserve, and shall not be deemed to have waived, any and all rights, including any claims or defenses they may have as of the date hereof or as may accrue during the term hereof, under any existing Federal or state law or administrative rule, regulation or guideline, as applicable, including, without limitation, the Upper Colorado River Basin Compact, the CRSPA, and any other applicable provision of law, rule, regulation or guideline. Notwithstanding anything to the contrary in this MOA 2, the terms of this paragraph shall survive the termination or expiration of this MOA 2.

- I. No Third-Party Beneficiaries. This MOA 2 is made for the benefit of the Parties. No Party to this MOA 2 intends for this MOA 2 to confer any benefit upon any person, entity, or State not a signatory to this MOA 2 upon a theory of third-party beneficiary or otherwise. Notwithstanding anything to the contrary in this MOA 2, the terms of this paragraph

shall survive the termination or expiration of this MOA 2.

- J. Notices. Whenever written notices related to this MOA 2 are to be given, the following provisions shall apply:

Each Party hereby designates the person listed below as its point of contact for purposes of written notice under this MOA 2:

State of Colorado
Colorado Water Conservation Board
Interstate, Federal & Water Information Section
Agricultural Water Resource Specialist
1313 Sherman St.
Denver, CO 80203

State of New Mexico
New Mexico Interstate Stream Commission
Colorado River Bureau Water Resource Specialist
P.O. Box 25102
Santa Fe, NM 87504-5102

State of Utah
Utah Department of Natural Resources
Utah Division of Water Resources
Interstate Streams Section
1594 West North Temple
Salt Lake City, UT 84116

State of Wyoming
Wyoming State Engineer's Office
Interstate Streams Division
Herschler Building - West Wing, 2nd Floor
122 W. 25th Street
Cheyenne, WY 82002

CREDA
Executive Director
Colorado River Energy Distributors Association
10429 S. 51st Street, Suite 230
Phoenix, AZ 85044

Reclamation
Regional Director
Bureau of Reclamation

Interior Region 7 - Upper Colorado Basin
125 South State Street, Room 8100
Salt Lake City, UT 84138

WAPA
Colorado River Storage Project Management Center
CRSP Manager
299 South Main Street, Suite 200,
Salt Lake City, UT, 84111

The Parties agree to provide notices as required under this MOA 2 to the Executive Director of the Upper Colorado River Commission.

Upper Colorado River Commission
Executive Director
355 South 400 East
Salt Lake City, UT 84111

Each Party agrees that it shall send all notices related to this MOA 2 to the above-named persons by regular mail and by electronic mail (email) at the email addresses provided to Reclamation by the Parties and the Upper Colorado River Commission. In the case of regular mailings, notice shall be deemed to have been given and received upon the date of the receiving Party's actual receipt or five calendar days after mailing, whichever occurs first. In the case of email, the notice shall be deemed given and received on the date indicated on the email, or on the delivery receipt for the email, whichever is earliest. Notices related solely to a specific Project may be given in accordance with the Project's PMP, or as otherwise agreed between Reclamation and the appropriate Upper Division State(s).

Each Party may revise any information related to its point of contact upon written notice to all other Parties.

- K. Reaffirmation of Existing Law. Nothing in this MOA 2 is intended to, nor shall this MOA 2 be construed to, diminish or modify the rights of any Party under existing law, including without limitation the Upper Colorado River Basin Compact and the CRSPA. The Parties hereby affirm the entitlement and right of each Upper Division State under such existing law to fully use and develop the waters of the Colorado River apportioned to that State.

L. Effective Date, Term, and Survival. Upon full execution by all of the Parties, this MOA 2 shall be effective from October 1, 2020 (Effective Date) through September 30, 2037, provided:

1. Section IV herein, under which the Parties agree to the use of power revenues for repayment of aid-to-irrigation obligations associated with CRSPA participating projects identified in Appendix A, shall survive the expiration of this MOA 2 and extend through WAPA's final aid-to-irrigation payment, or September 30, 2057, whichever occurs first.
2. In the event a CRC is triggered between 2033 and the term of this MOA 2, the provisions contained in Section V.A.1. herein shall survive the expiration of this MOA 2 and extend until the amount withheld due to the CRC is restored to Reclamation in accordance with the provisions of Section V.A.5 herein.
3. MOA Revenues transferred to Reclamation and unexpended on September 30, 2037, as well as CRC restoration revenues pursuant to Section V.A.5, will continue to be available until September 30, 2047, to fund Projects identified and approved under the terms of this MOA 2. All Projects shall be concluded by September 30, 2047, after which date any remaining MOA Revenues shall remain in the Basin Fund.
4. The Parties will commence a review of this MOA 2 to consider any modification, extension, or termination no later than September 30, 2035.

M. Merger. Except as otherwise provided in Section V. of this MOA 2, all previous agreements between the Parties including, without limitation, the MOA, are merged with this MOA 2 and will have no further force or effect after the Effective Date of this MOA 2.

N. Entire Agreement. This MOA 2 and Appendix A constitute the full and entire understanding and agreement between and among the Parties, and is binding upon the Parties. The Parties agree that the template PMP attached to this MOA 2 as Appendix B is for example purposes only and will not bind the Parties with respect to the terms of any future PMPs. Subsequent PMPs

may vary in form and content from Appendix B, as may be agreed upon by the Parties on a case by case basis.

- O. Authority. Each person executing this MOA 2 represents its respective Party in the matters addressed in this MOA 2 and has the full power and authority to bind its respective Party to the terms of this MOA 2. No Party shall challenge the authority of any person to execute this MOA 2 and to bind its Party to the terms hereof, and the Parties hereby waive the right to challenge such authority.
- P. Information Request. Each Party agrees to notify the other Parties if in receipt of a public records request for any records related, directly or indirectly, to this MOA 2, including requests related to any Project financed in whole or in part with MOA Revenues. The Parties recognize that each Party is subject to its governing laws when responding to any such records request.
- Q. Actions Contingent on Availability of MOA Revenues. The expenditure or advance of any money or the performance of any obligation by the United States under this MOA 2 shall be contingent upon availability of MOA Revenues. No liability shall accrue to the United States in the event MOA Revenues are not available.
- R. Assignment. Assignment or transfer of this MOA 2 or any of its provisions is strictly prohibited.
- S. Drafting Considerations. This MOA 2 has been negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this MOA 2 pertains. No one Party shall be considered to have drafted this MOA 2.
- T. Severability. If any provision of this MOA 2 is held invalid or unenforceable, the remainder of this MOA 2 shall not be affected and shall be valid and enforceable.
- U. Counterparts. This MOA 2 may be executed through the use of separate signature pages or in any number of

counterparts, and the counterparts collectively shall constitute a single agreement binding on all of the Parties.

VIII. Signatures.

IN WITNESS WHEREOF, each Party to this MOA 2 has caused its signature to be affixed hereto on the dates indicated below.

[Signatures on following pages.]

Rebecca Mitchell
Director
Colorado Water Conservation Board

Date

John R. D'Antonio, Jr.
Secretary
New Mexico Interstate Stream Commission

Date

Todd Adams
Director
Utah Division of Water Resources
Utah Department of Natural Resources

Date

Mark Gordon
Governor
State of Wyoming

Date

Leslie James
Executive Director
Colorado River Energy Distributors Association

Date

Brent Esplin
Regional Director, Upper Colorado Region
Bureau of Reclamation

Date

Steven R. Johnson
CRSP Manager, CRSP Management Center
Western Area Power Administration

Date

APPENDIX A

WAPA will collect sufficient revenues under CRSP 5(c) for repayment of the following:				
Irrigation Project	State	Approximate Amount Due	Payment Due	Current Status
Vernal Unit of the Central Utah Project	Utah	8,781,000	2016	Completed
Smith Fork Project	Colorado	3,190,000	2017	Completed
Seedskadee Project	Wyoming	1,224,000	2017	Completed
Emery County Project	Utah	6,391,000	2020	Completed
Silt and Florida Projects	Colorado	13,684,000	2021	Completed
San Juan-Chama Project	New Mexico	21,797,000	2023	Completed
Duchesne Unit of the Central Utah Project	Utah	103,753,000	2025	Completed
Bostwick Park Project	Colorado	5,482,000	2029	
Eden Project	Wyoming	12,387,000	2029	
San Juan-Chama Project	New Mexico	941,000	2032	
Hammond Project	New Mexico	6,637,000	2032	
Jensen Unit of the Central Utah Project	Utah	4,977,000	2034	
Lyman Project	Wyoming	23,812,000	2035	
Dolores Project	Colorado	50,454,000	2038	
Paonia Project	Colorado	5,146,000	2040	
Dallas Creek Project	Colorado	1,905,000	2042	
Dolores Project	Colorado	101,807,000	2045	
Dolores Project	Colorado	78,521,000	2048	
Dolores Project	Colorado	23,264,000	2049	
Heber-Francis of the Central Utah Project	Utah	73,209,000	2050	
Dolores Project	Colorado	80,719,000	2052	
Utah County Project	Utah	96,966,000	2054	
Starvation Reservoir of the Central Utah Project	Utah	14,545,000	2055	
Animas La Plata Project	Colorado	22,703,000	2057	
Uintah Basin Replacement Project of the Central Utah Project	Utah	12,121,000	2057	

RECLAMATION

Managing Water in the West

U.S. Department of the Interior
 Bureau of Reclamation
 UC Regional Office
 Salt Lake City, Utah

Basin Fund MOA2 Project Management Plan (PMP) (Example Template)

(The PMP will identify how the Project will be executed, monitored, and managed, and include any special Project circumstances and necessary attachments)

Project Name	Date Approved
Accounting String (Fund & WBS)	WOID
RECLAMATION OFFICE INFORMATION	UPPER DIVISION STATE AND OTHER PARTNERING ENTITY INFORMATION
Principal Designer	Partnering Entity
Project Manager	Partnering Entity's Technical Representative
Project Sponsor	Partnering Entity's Primary Project Contact

1. Objectives & Scope Statement: (list objectives, features, deliverables, and previously submitted Project justification forms-all relevant documents will be attached to this PMP)

2. Scope of Work: The following planning, design, cultural and environmental compliance, and other activities are necessary to complete the Project and will be performed in consultation with the State of _____ and in accordance with the 2020 Basin Fund MOA2. *(Add, remove, or modify activities as necessary)*

1. Preliminary project scope and budget approved and funds obligated.
2. Preliminary field surveying and data gathering
3. Interim design and cost estimate
4. Final design, specifications, and cost estimate
5. NEPA and other environmental clearances for construction, with [Upper Division State(s) involvement]
6. Solicitation of contractors and contract award
7. Construction, project oversight and inspection (develop and implement post project capacity building if applicable: e.g. to train Project beneficiaries to operate new equipment and systems after transfer has occurred.
8. Project closeout and notice to the State

3. Schedule of Milestones <i>(add, remove, or modify tasks as necessary. Identify which milestones must be met prior to initiating Procurement Process)</i>	Milestone Dates	Est. Completion
1: Approval of preliminary Project scope and budget and funds obligated.		
2: Preliminary field surveying and data gathering		
3: Interim design and cost estimate		
4: Final design, specifications, and cost estimate		
5: NEPA and other environmental clearances for construction, with State involvement		
6: Solicitation of contractors and contract award		
7: Construction, project oversight and inspection		
8: Project closeout and notice to the State		

5. Roles and Responsibilities - For each activity, identify the respective responsibilities for each entity involved in its completion

(list names, telephone numbers, and roles)

6. Change Management will adhere to the 2020 Basin Fund MOA2 and as supplemented here. Any changes to the Project scope, schedule, Budget, or deliverables will be documented by Reclamation in a progress report or email to the State.

7. Communication *(Define what major communications will be made at what phases of the Project. Define the communication strategy with and between Reclamation, the State(s), partnering entities, and key stakeholders)*

Meetings and conference calls: *(what, how often, who attends)*

Status reports: *(what, how often, to whom)*

Communication expectations:

8. Risk Management: This evaluation should include identification and assessment of project risks, as well as contingency plans to address high impact risk factors.

9. Substantial Completion and Transfer

10. Project Closeout

11. Signatures: The following signatures indicate approval of or concurrence with this PMP.

Reclamation Area Office		Partnering Entity	
Project Manager	Date	[UD State Agency]	Date
Principal Designer	Date	Project Beneficiary/Partnering Entity	Date

Project Sponsor	Date	Client Budget Officer/Funding-Cost Share Approval	Date
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