**UCRC FACILITATION EXHIBIT FOR IMPLEMENTATION OF A TEMPORARY SYSTEM CONSERVATION PILOT PROGRAM IN THE UPPER COLORADO RIVER BASIN**

1. **INTRODUCTION**
2. Purpose: This UCRC Facilitation Exhibit for Implementation of a Temporary System Conservation Pilot Program in the Upper Colorado River Basin (“Facilitation Exhibit”) describes how the Upper Colorado River Commission (“UCRC”) intends to implement the “Agreement Between the United States of America, Through the Department of the Interior, Bureau of Reclamation (“Reclamation”) and the UCRC, Regarding the Funding of a Temporary Colorado River System Conservation Pilot Program in the Upper Colorado River Basin” dated \_\_\_\_\_\_\_\_\_\_, 2022 (the “Agreement”). This Facilitation Exhibit:
3. Outlines the process the UCRC will use to seek proposals from interested Upper Division Water Users to participate in the Pilot Program;
4. Sets forth the Project criteria for eligibility to participate in the Pilot Program;
5. Describes how the UCRC and the Upper Division States will select Projects for participation in the Pilot Program;
6. Describes how the UCRC will Verify approved Projects; and
7. Describes how Reclamation will review Projects.
8. **DEFINITIONS**

The following definitions, as set forth in the Agreement, shall apply for purposes of this Facilitation Exhibit only. No definition set forth in this Facilitation Exhibit shall be construed as evidence or an indicator of the UCRC’s interpretation or intent as it relates to similar terms that may exist in other laws, rules, regulations, agreements, or other relevant documents that may involve, implicate, or otherwise affect the UCRC.

1. “Agreement” means the Agreement Between the United States of America, Through the Department of the Interior, Bureau of Reclamation, and the Upper Colorado River Commission, Regarding the Funding of a Temporary Colorado River System Conservation Pilot Program in the Upper Colorado River Basin dated \_\_\_\_\_\_\_\_\_\_\_\_, 2022.
2. “Colorado River Compact” means the document signed on November 24, 1922, at Santa Fe, New Mexico, pursuant to an act of Congress approved August 19, 1921 (42 Stat. 171).
3. “Colorado River System” shall have the meaning ascribed to such term in the Colorado River Compact.
4. “Consumptive Use” means the man-made diversions of water from the Colorado River System, less any return flow to the river system that is available for Consumptive Use in the Upper Basin.
5. “Evaluation” or “Evaluating” means the UCRC evaluating the results of the Pilot Program and reporting those results to Reclamation.
6. “Facilitation Exhibit” means this document which is attached as Exhibit 1 of the Agreement and describes how the UCRC intends to implement the Agreement.

1. “Pilot Program” means the Pilot Program described in the Agreement and implemented within the Upper Division States.
2. “Pilot Program Funds” means funds provided by Reclamation consistent with the terms of the Agreement, and according to the schedules and terms of SCIAs as executed with Upper Division Water Users.
3. “Pilot Program Funding Account” means a bank account opened in the name of the UCRC to accept, maintain, and release Pilot Program Funds according to the terms of the Agreement and any applicable SCIA.
4. “Project” means a System Conservation proposal selected for inclusion in the Pilot Program.
5. “Project Participant” means a Project Proponent whose SCIA has been executed.
6. “Project Proponent” means an Upper Division Water User who applies to participate in the Pilot Program pursuant to the terms of this Facilitation Exhibit.
7. “Reclamation” means the United States Bureau of Reclamation.
8. "RFP” means a request for proposal issued by the UCRC soliciting Project proposals to be included in the Pilot Program.
9. “System Conservation” means a voluntary reduction of Consumptive Use of Colorado River water that can be estimated or measured. System Conservation does not include: (i) measures implemented by an Upper Division Water User to meet Consumptive Use reduction obligations under any transfer, acquisition, or conservation agreement with another party, (ii) implemented for monetary payment or other valuable consideration from any third party not a signatory to the Agreement, or (iii) efforts that are voluntarily, administratively or judicially ordered to be undertaken by an Upper Basin Water User for purposes other than System Conservation.
10. “SCIA” means a System Conservation implementation agreement entered into between the UCRC and the Project Proponent following approval of a proposal to participate in the Pilot Program consistent with the terms of the Agreement and this Facilitation Exhibit. Each SCIA shall include a Verification plan.
11. “Secretary” means the Secretary of the United States Department of the Interior.
12. “Upper Basin” means those parts of the States of Arizona, 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 States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry, as defined in the Colorado River Compact.
13. “UCRC” means the Upper Colorado River Commission.
14. “Upper Basin Compact” means the Upper Colorado River Basin Compact regarding the Colorado River System signed by the states of Arizona, Colorado, New Mexico, Utah, and Wyoming on October 11, 1948, and consented to by an act of Congress on April 6, 1949 (63 Stat. 31, Chapter 48).
15. “Upper Division States” means Colorado, New Mexico, Utah, and Wyoming, as defined in the Colorado River Compact.
16. “Upper Division Water User” means a person or entity within an Upper Division State that has an existing authorization under applicable state law to divert Colorado River System water for beneficial uses. Upper Division Water Users shall also include Native American Tribes or Tribal entities within an Upper Division State that have an existing authorization under applicable federal or state law to divert and use Colorado River System water.
17. “Upstream Initial Units” means Curecanti (the “Aspinall Unit”), Flaming Gorge Dam, and Navajo Dam as authorized by the Act of April 11, 1956 (70 Stat. 105), designated the Colorado River Storage Project Act.
18. “Verification” means confirmation that the action(s) proposed by the Project Proponent and agreed to under a SCIA have been taken. Verification will occur pursuant to a Verification plan to be agreed upon between the Project Proponent and the UCRC and included as part of the SCIA.
19. **SELECTION OF PROJECTS**
20. Solicitation: The UCRC shall solicit Project proposals to participate in the Pilot Program consistent with the terms of the Agreement, this Facilitation Exhibit, the UCRC’s authorities, and the laws of the Upper Division State in which the Project would be located.
21. Request for Proposal: The UCRC, in consultation with the Upper Division States, shall develop and issue an RFP each year the UCRC implements the Pilot Program. Each year’s RFP shall provide Upper Division Water Users the option of submitting: (a) a proposal that accepts the fixed price per acre-foot established by the UCRC; or (b) a proposal in which the Upper Division Water User requests a per acre-foot price for their Project that differs from the fixed price the UCRC has established. Proposals shall include a proposed Verification plan. The UCRC shall work with the Upper Division States to assure widespread distribution of the RFPs among Upper Division Water Users.
22. Fixed Price Determination: The UCRC shall determine the fixed price to be included in the RFP before the UCRC issues the RFP. The UCRC will consult with Reclamation in development of fixed per acre-foot pricing.
23. Proposal Collection and Initial Project Selection:
    1. *Collection of Proposals:* The UCRC shall collect the proposals. Each Upper Division State shall designate a point of contact to coordinate and communicate with the UCRC in the review of the proposals, the selection of Projects for inclusion in the Pilot Program, and the development and execution of SCIAs for each Project.
    2. *Project Selection:* In consultation with the Upper Division States, the UCRC shall review and select proposals for possible inclusion in the Pilot Program based on the following factors and other criteria the Upper Division States deem appropriate.
       1. A history of recent consumptive use of Colorado River water by the Project Proponent;
       2. Adherence of the proposal to the requirements of this Facilitation Exhibit and the RFP;
       3. Prioritize projects that are likely to mitigate impacts of the ongoing drought;
       4. Diversity of location and type of conservation measures, including consideration of multiple benefits;
       5. The relative size of the Project in terms of acre-feet of water that may be conserved;
       6. The comparative ease or difficulty of implementing the SCIA, including the proposed Verification Plan;
       7. The amount of time required for the Project to generate System Conservation;
       8. Required permitting and approvals, if any; and
       9. For non-fixed price proposals, the amount of the proposed price per acre-foot and a justification for the proposed price.
    3. *Fixed Price Proposals:* No price negotiations are needed for selected Projects that were submitted pursuant to a fixed price proposal, and the fixed price the UCRC established shall be the per-acre foot price included in the SCIA for the Project.
    4. *Pricing for Non-Fixed Price Proposals*: For non-fixed price proposals, the UCRC may accept the proposed per acre-foot price or may negotiate a mutually acceptable price with the Project Proponent, provided that the UCRC shall consult with the Upper Division States in the selection or negotiation of the per acre-foot price to be included in the SCIA. If the UCRC and the Project Proponent cannot agree on a mutually acceptable price, the UCRC shall reject the proposal and notify the Project Proponent in writing.
    5. *Modifications to Verification Plan*: The UCRC and the Upper Division States may require changes to the proposed Verification plan as needed. If the Project Proponent is unwilling to accept changes the UCRC and the Upper Division States require, the UCRC shall reject the proposal and notify the Project Proponent in writing.
24. Negotiation and Execution of SCIAs: The UCRC and the Upper Division States shall use the following process to develop and execute SCIAs for selected Projects:
    1. *Preparation of Draft SCIA:* The UCRC shall prepare a draft SCIA for each Project based on the template attached as Exhibit 2 of the Agreement. If the UCRC determines that substantial modification to the SCIA template is required to accommodate the unique circumstances of a Project, the UCRC shall note where changes have been made from the template when it submits the draft SCIA for review and approval.
    2. *Review by Upper Division State Where Project is Located*:The UCRC shall provide the Upper Division State where the Project is located with a draft SCIA for review and approval. The draft SCIA must include the agreed upon per acre-foot price and the agreed upon Verification plan. The Verification plan shall also identify any Pilot Project Funds to be applied toward Verification. If the Upper Division State in which a Project is located does not approve the draft SCIA, the UCRC shall reject the proposal and notify the Project Proponent in writing.

* 1. *Review of SCIA by Upper Division States:* After the Upper Basin State in which a Project is located approves a draft SCIA, the UCRC shall provide the draft SCIA to all of the Upper Division States for final review and agreement. If an Upper Division State requests edits to the draft SCIA, the UCRC shall incorporate the edit into the draft SCIA and circulate the draft SCIA to the Project Proponent.
  2. *Reclamation Review of Draft SCIA*: After the Upper Division States have concluded their review of a draft SCIA under paragraph C.5.c, the UCRC shall provide the draft SCIA to Reclamation, including information describing the Project, Project consistency with the Facilitation Exhibit, and substantive deviations from the SCIA template. Reclamation may object to the draft SCIA if the draft SCIA is inconsistent with the Agreement, this Facilitation Exhibit, or federal law. Reclamation shall notify the UCRC of any objections to a draft SCIA as soon as possible but no later than 15 days after the date on which Reclamation receives the draft SCIA. The UCRC and Reclamation will work together to resolve any objections Reclamation may raise.
  3. *Review of SCIA by the Project Proponent:* After the UCRC completes the process set forth in paragraph C.5.a through C.5.d, the UCRC shall provide the Project Proponent with the draft SCIA. The Project Proponent shall review the draft SCIA and provide comments to the UCRC. If the Project Proponent requests substantive edits to the draft SCIA, the UCRC shall circulate the requested edits to the Upper Division States. The UCRC and the Upper Division States shall review the Project Proponent’s requested edits within five (5) business days of the date the UCRC circulates the proposed edits. If the edits cannot be reconciled, the UCRC and the Upper Division States shall commit to attend a timely conference call with the Project Proponent to resolve remaining issues. If consensus on the terms of a draft SCIA cannot be reached, the UCRC shall reject the proposal and notify the Project Proponent in writing.
  4. *Execution of SCIA:* Upon obtaining consent to finalize a SCIA from the Upper Division States and the Project Proponent, the UCRC shall finalize and execute the SCIA with the Project Proponent.

1. Recordkeeping: The UCRC shall keep record of all approvals required under this Section C with the SCIA for each Project.
2. **IMPLEMENTATION**
3. Implementation: To implement the Pilot Program, the UCRC shall administer the SCIAs and shall perform Verification for the selected Projects. The UCRC shall perform these tasks in consultation with the Upper Division States through their designated point of contact and the Upper Division States shall assist the UCRC as needed.
4. **PILOT PROGRAM FUNDING MANAGEMENT**
5. Pilot Program Funding – Participation: The UCRC shall facilitate payment of Pilot Program Funds to Project Proponents pursuant to the Agreement.
6. Transfer and Disbursement of Pilot Program Funds:
7. *Deposit of Pilot Program Funds*: The UCRC shall deposit the Pilot Program Funds received from Reclamation into a designated Pilot Program Funding Account.
8. *Distribution of Pilot Program Funds to Project Participants*:
   * + 1. Consistent with the terms of the Agreement, the UCRC shall authorize distribution of Pilot Project Funds to a Project Participant pursuant to the payment schedule set forth in the applicable SCIA.
       2. Distribution of any Pilot Program Funds to a Project Participant under this Facilitation Exhibit shall be subject to the availability of sufficient money provided to the UCRC pursuant to the Agreement.
9. *Payment* *of Costs*: In addition, the UCRC shall use Pilot Program Funds to pay for the costs of administration of the Pilot Program.
10. Buy America Act: All costs incurred in connection with the Pilot Program shall be consistent with the provisions of the Buy America Act (41 U.S.C. §§ 8301 et seq.), as applicable.
11. **MISCELLANEOUS**
    * + 1. Contractors and Designees: The UCRC is authorized to utilize contractors or other authorized designees to fulfill its obligations under this Facilitation Exhibit.
        2. Amendment: the UCRC and Reclamation may revise and amend this Facilitation Exhibit in writing without amending the Agreement.
        3. Conflicts: If there is a conflict between the provisions of this Facilitation Exhibit and the provisions of the Agreement, the provisions of the Agreement shall govern.
        4. No Precedent: This Facilitation Exhibit does not create any future rights or obligations or create any precedent regarding management, operation, or administration of the Colorado River System beyond the scope of the Pilot Program.