Agreement No. \_\_\_\_\_\_\_\_\_\_\_\_\_

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

PREAMBLE

THIS AGREEMENT (“Agreement”) is entered into this \_\_\_day of \_\_\_\_\_\_\_\_\_\_\_2022, by and between the UNITED STATES OF AMERICA (“United States”), represented by the Secretary of the Interior (“Secretary”) acting through the officials of the U.S. Bureau of Reclamation (“Reclamation”) executing this Agreement and the Upper Colorado River Commission (“UCRC”), each being referred to individually as “Party” and collectively as the “Parties.”

PARTIES

The UCRC was created by the Upper Basin Compact among the states of Arizona, Colorado, New Mexico, Utah, and Wyoming. Article VIII of the Upper Basin Compact authorizes the UCRC to, among other things, perform all functions required by the Compact and do all things necessary, proper, and convenient in the performance of its duties either independently or in cooperation with any state or federal agency.

Reclamation was created by the Reclamation Act of 1902 (32 Stat. 388), which, as amended and supplemented, authorizes Reclamation to act on behalf of the Secretary in constructing, operating, and maintaining certain facilities on the Colorado River, including the initial units of the Colorado River Storage Project, consisting of dams, reservoirs, power plants, transmission facilities and appurtenant works.

RECITALS

 WHEREAS, the Colorado River Storage Project Act (82 Stat. 885), as amended, authorized the Secretary to construct and operate Glen Canyon Dam and the Upstream Initial Units, to support the Upper Division States in developing and utilizing their share of the Colorado River and meet their obligations under the Colorado River Compact;

 WHEREAS, the Colorado River System has been suffering from the effects of a long-term drought resulting in substantially decreased inflows into Lake Powell and depleted storage;

 WHEREAS, recent Colorado River System modeling projections show a serious near-term risk that the water elevations in Lake Powell and the Upstream Initial Units could decline to levels that would interrupt the ability of the Upper Division States to benefit from the operation of Lake Powell and the Upstream Initial Units;

 WHEREAS, from 2015 until 2018, the Upper Division States participated in a System Conservation Pilot Program (“SCPP”) with the UCRC acting as the contracting entity;

 WHEREAS, the UCRC’s 2018 Report (“2018 Report”)on the results of the SCPP stated that “the overall goals of SCPP were to, among other things, help explore, learn from and determine whether a voluntary, temporary, and compensated reduction in consumptive use in the Upper Basin is a feasible method to partially mitigate the decline of or to raise water levels in Lake Powell;”

 WHEREAS, the 2018 Report also explained that “the primary objective of the SCPP was not to test whether conserved water actually reaches Lake Powell, but rather to assess the feasibility of System Conservation as a future means of increasing storage at the reservoir;”

 WHEREAS, the 2018 Report found that Upper Basin Water Users have an interest and willingness to participate in voluntary, temporary, and compensated water conservation activities;

 WHEREAS, the UCRC ended the SCPP via a resolution dated June 20, 2018;

 WHEREAS, in August 2022, Congress passed the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 50233 (“Inflation Reduction Act”) of which appropriated $4,000,000,000 through September 30, 2026, for “activities to mitigate the impacts of drought in the Reclamation States and other basins experiencing comparable levels of long-term drought;”

 WHEREAS, the Parties propose to establish another System Conservation Pilot Program, whereby Upper Division Water Users would be compensated for temporary and voluntary reductions in water use, including but not limited to municipal and industrial conservation efforts, and the fallowing of agricultural lands, to create conserved water to benefit the Colorado River System;

 WHEREAS, the UCRC desires to enter into cooperative agreements with Upper Division Water Users for compensated voluntary reductions of Consumptive Use of water to be funded by the United States subject to the enactment of legislation reauthorizing Reclamation to fund System Conservation efforts in the Upper Basin;

 WHEREAS, Reclamation has committed to further the objectives of this Agreement and the Pilot Program;

 WHEREAS, the UCRC has determined that a System Conservation Pilot Program for the period of 2023 through water year 2026 may mitigate the impacts of drought on the Colorado River System within the Upper Basin;

 WHEREAS, the UCRC has committed to further the objectives of this Agreement and the Pilot Program by coordinating with Upper Division Water Users to utilize funds made available by Reclamation for temporary and voluntary System Conservation projects.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. APPLICABILITY: Participation in the Pilot Program implemented pursuant to this Agreement within the Upper Division States shall be limited to Upper Division Water Users.
2. DEFINITIONS: For the purpose of this Agreement and its exhibits, the following definitions shall apply to capitalized terms in this Agreement in addition to other terms defined herein. No definition set forth in this Agreement shall be construed as evidence or an indicator of the Parties’ 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 Parties.
	1. “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).
	2. “Colorado River System” shall have the meaning ascribed to such term in the Colorado River Compact.
	3. “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.
	4. “Evaluation” or “Evaluating” means the UCRC evaluating the results of the Pilot Program and reporting those results to Reclamation.
	5. “Facilitation Exhibit” means the UCRC Facilitation Exhibit for Implementation of SCPP attached as Exhibit 1 to this Agreement, which describes how the UCRC intends to implement the Agreement.
	6. “Governor’s Representative” means any one of the Upper Colorado River Commissioners representing his or her state on the Commission.
	7. “Pilot Program” means the Pilot Program described in this Agreement and to be funded pursuant to this Agreement.
	8. “Pilot Program Funds” means funds provided by Reclamation to the UCRC consistent with the terms of this Agreement and provided by the UCRC to Upper Division Water Users according to the schedules and terms of SCIAs as executed with Upper Division Water Users.
	9. “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 this Agreement and any applicable SCIA.
	10. “Project” means a System Conservation Project proposed or selected for inclusion in the Pilot Program.
	11. “Project Proponent” means an Upper Division Water User who applies to participate in the Pilot Program pursuant to the terms of the Facilitation Exhibit.
	12. “Reclamation” means the United States Bureau of Reclamation.
	13. "RFP” means a request for proposals issued by the UCRC to Upper Division Water Users soliciting Projects to be included in the Pilot Program.
	14. “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 this Agreement, or (iii) efforts that are voluntarily, administratively or judicially ordered to be undertaken by an Upper Division Water User for purposes other than System Conservation.
	15. “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 this Agreement and the Facilitation Exhibit. Each SCIA shall include a Verification plan.
	16. “Secretary” means the Secretary of the United States Department of the Interior.
	17. “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.
	18. “UCRC” means the Upper Colorado River Commission.
	19. “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).
	20. “Upper Division States” means Colorado, New Mexico, Utah, and Wyoming, as defined in the Colorado River Compact.
	21. “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.
	22. “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.
	23. “Verification” or “Verify” 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.
3. GENERAL TERMS AND CONDITIONS:
	1. Purpose: The purpose of this Agreement is to initiate the Pilot Program within the Upper Basin to mitigate the impacts of the long-term drought and depleted storage. This Agreement describes the mechanism by which the Secretary acting through Reclamation shall fund temporary and voluntary Pilot Projects in the Upper Colorado River Basin with the participation of the Upper Division States acting through the UCRC.
	2. SCIAs: For projects funded pursuant to this Agreement, the UCRC shall enter into, and administer, SCIAs with Upper Division Water Users selected for inclusion in the Pilot Program. Individual SCIAs between the UCRC and each participating Upper Division Water User shall provide for, among other things, the payment terms, the project timing, and project specific performance metrics. Reclamation shall be a third-party beneficiary of the SCIAs.
	3. Timing of Pilot Program Proposals: The UCRC shall begin seeking proposals from Upper Division Water Users for implementation during water year 2023.
	4. Selection of Pilot Program Participants: The UCRC, in consultation with the Upper Division States, shall set criteria to select Upper Division Water User proposals for inclusion in the Pilot Program based on the Facilitation Exhibit. The Parties may amend the Facilitation Exhibit in writing, without amending this Agreement.
	5. Form of SCIA: Upper Division Water Users selected for participation in the Pilot Program shall be required to execute a SCIA with the UCRC. The UCRC shall strive to use the terms of the SCIA template in Exhibit 2, but the Parties recognize that the terms of the SCIA template may differ based upon the unique needs of each Project Proponent or the unique circumstances of each System Conservation project.
	6. Payments to Participating Upper Division Water Users: Compensation for System Conservation shall be paid by the UCRC to Upper Division Water Users with approved System Conservation projects from the funding Reclamation makes available to the UCRC for the Pilot Program. Upper Division Water Users may be paid some of the required payments after Verification has occurred.
	7. Reporting: The UCRC shall provide Reclamation with a written report by March 31 of each year, or at another mutually agreeable time, that summarizes the Pilot Program implementation including the amount of funds expended in the previous water year.
	8. No Individual Benefit: The System Conservation water conserved pursuant to this Agreement and a SCIA shall accrue only to the benefit of the Upper Basin of the Colorado River System.
4. FUNDING:
	1. United States: Subject to appropriations, Reclamation shall provide up to $125 million in funding to the UCRC towards the total Pilot Program costs in a manner mutually agreed to by the Parties. Provided, however that:
		1. additional Federal funding can be added to this Agreement without requiring amendment of this Agreement;
		2. in addition to the federal funding contribution in Paragraph 4.1, Reclamation may provide staffing and administrative support (in-kind contributions) to assist the UCRC in implementing the Pilot Program.
	2. Administration Costs: The funding of total Pilot Program costs funding in this Paragraph 4 shall include all costs incurred by the UCRC in administering the Pilot Program, including but not limited to payments for Pilot Program administration through one or more third-party contractor(s), the UCRC's costs in complying with the reporting and other requirements set forth in this Agreement, the UCRC’s documented Evaluation costs and Verification costs, and any other documented costs the UCRC and the Upper Division States may incur in implementing the Pilot Program. These administration costs will be in addition to payments made to Pilot Program participants.
	3. Administration of Pilot Program Funds: The UCRC or its designated agent(s) shall keep full and complete records of Pilot Program Funds and expenditures made pursuant to this Agreement according to generally accepted accounting standards. These records shall be available for inspection, audit, and reproduction by Reclamation during normal business hours. At the end of the Pilot Program, the UCRC shall provide an itemized statement to Reclamation documenting how the Pilot Program Funds were spent and any credits that are available for reimbursement if Program Funds exceed expenditures made.
	4. Reimbursement of Pilot Project Funds: At the conclusion of the Pilot Program, the UCRC shall direct any Pilot Program Funds not expended as part of the Pilot Program to be returned or redirected according to Reclamation’s instructions. The Parties recognize that any Pilot Project Funds to be reimbursed or redirected as set forth in this Agreement shall be equal to the Pilot Program Funds the UCRC received from Reclamation, minus any funding the UCRC expended pursuant to this Agreement, and may also include deductions from the reimbursement total for any fees associated with maintaining the Pilot Program Funding Account and any other administrative costs incurred by the UCRC and its agents that have been previously agreed to by the UCRC and Reclamation.
5. EVALUATING SYSTEM CONSERVATION: The UCRC will evaluate the results of each approved System Conservation Project and the implementation of the overall Pilot Program. The UCRC will provide Reclamation with the results of its Evaluation in the reports required under Paragraph 3.7 of this Agreement.
6. Disclosure of Information: The Parties recognize that the information obtained or developed from activities performed under this Agreement may be public information that is available for release upon request, except to the extent otherwise provided by applicable law.
7. NON-WAIVER: No Party to this Agreement shall be considered to have waived any right hereunder unless such waiver of the right is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or a relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.
8. UNCONTROLLABLE FORCES: No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, 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 reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force shall give prompt written notice of such act to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.
9. REPRESENTATIONS AND WARRANTIES:
	1. This Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms. Each Party: (i) warrants and represents that such Party and the individual executing this Agreement on behalf of the Party is authorized by, and has undertaken all prerequisite actions required by applicable Federal and State laws and regulations to perform the obligations and exercise the rights contemplated herein; and (ii) acknowledges that such warranty and representation is a material inducement to, and has been relied upon by, the other Parties in entering into this Agreement and performing that Party’s respective obligations hereinafter.
	2. The Parties recognize that implementing the Pilot Program in the Upper Basin will provide valuable information for developing drought management tools in each of the Upper Division States. Such information shall be useful regardless of whether the Pilot Program produces conserved water in quantities that result in measurable increased stream flow in the Colorado River System. The Parties, therefore, agree that no Party shall be liable, if, despite good faith efforts, expenditure of Pilot Program Funds does not produce measurable yields of conserved water at Lake Powell or elsewhere in the Colorado River System.
10. GOVERNING LAW: This Agreement shall be interpreted, governed by, and construed under applicable Federal law. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Agreement shall be in an appropriate Federal court in the Upper Division States.
11. BINDING EFFECT AND LIMITED ASSIGNMENT: This Agreement is and shall be binding upon and shall inure to the benefit of the Parties and, if ever applicable, the legal successors and assigns of their assets and liabilities, provided that no assignment shall be valid unless approved in writing by all Parties.
12. AMENDMENT, MODIFICATION, AND/OR SUPPLEMENT: Except as otherwise provided in this Agreement or its Exhibits, no amendment, modification, or supplement shall be binding unless it is in writing and signed by all Parties.
13. DRAFTING CONSIDERATIONS: Each Party and its counsel have participated fully in the drafting, review, and revision of this Agreement, each of whom is sophisticated in the matters to which this Agreement pertains, and no one Party shall be considered to have drafted this Agreement.
14. NOTICES: All notices required to be given hereunder shall be in writing via email with confirmation of receipt or First-Class U.S. mail to a Party’s principal representative at the address set forth below. Any Party from time to time may by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notice shall be effective upon receipt.

BUREAU OF RECLAMATION:

Regional Director Upper Colorado Region

125 South State Street, Room 6107

Salt Lake City, UT 84138-1147

WPullan@usbr.gov

UPPER COLORADO RIVER COMMISSION:

 Charles R. Cullom, Executive Director

 50 S 600 E, Suite 100

 Salt Lake City, UT 84102

 ccullom@ucrcommision.com

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

1. JUDICIAL REMEDIES NOT FORECLOSED: Nothing in this Agreement shall be construed: (i) as in any manner abridging, limiting, or depriving any Party of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof, or of any other remedy which it would otherwise have; or (ii) as depriving any Party of any defense thereto which would otherwise be available.
2. AVAILABILITY OF INFORMATION: Subject to applicable Federal laws and regulations, each Party to this Agreement shall have the right during office hours to examine and make copies of the other Party's books and records relating to matters covered by this Agreement.
3. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS: The expenditure or advance of any money or the performance of any obligation of the Parties under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to any of the Parties in case funds are not appropriated or allotted
4. OFFICIALS NOT TO BENEFIT: No Member of or Delegate to the Congress, or Resident Commissioner, or official of the UCRC or any Upper Division State, shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.
5. NO THIRD-PARTY BENEFICIARIES: This Agreement and any agreements made or actions taken pursuant hereto are made solely for the benefit of the Parties. This Agreement does not confer any right or entitlement to benefits from this Agreement on any person or entity that is not signatory to this Agreement, including any of the Upper Division States, regardless of the legal theory on which such a claim is made.
6. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.
7. TERM: This Agreement shall become effective upon the enactment of federal legislation that renews authorization for Reclamation to carry out its obligations under this Agreement. Provided, however, that if either Party considers the enacted federal legislation to be inconsistent with the terms of this Agreement, or if federal reauthorizing legislation is not enacted, then either Party may request that the Parties meet to seek consensus on a path forward. If the Parties are unable to reach consensus on a path forward after holding one (1) meeting, either Party may terminate this Agreement by sending notice to the other Party. This Agreement shall expire on September 30, 2027, provided that no additional funding may be provided for System Conservation activities consistent with the Inflation Reduction Act following September 30, 2026. Nothing in this Agreement shall be considered support by Reclamation for enactment of legislation.
8. No Precedent: The terms the Agreement shall not be deemed to establish any precedent for the UCRC or any Upper Division State.
9. Existing Law: The Parties intend the implementation of this Agreement and any uses of water as a result of this Agreement to be consistent with existing law. Nothing in this Agreement shall be deemed to affect, influence, or otherwise give meaning to any particular provision of the Colorado River Compact, the Upper Basin Compact, the Boulder Canyon Project Act, the 1944 Mexico Water Treaty, the Colorado River Storage Project Act (82 Stat. 885), the U.S. Supreme Court’s Consolidated Decree in *Arizona v. California*, and the Colorado River Basin Project Act (88 Stat. 266). The Parties further intend that nothing in this Agreement is intended to, nor shall this Agreement be construed to, diminish or modify the rights of water users under existing law to waters from the Colorado River System.
10. Reservation of Rights and Authorities: Neither the terms and conditions of this Agreement, nor its execution by the signatory Parties, shall be deemed to limit, reduce, or alter any Party’s rights, authorities or obligations under existing state or federal law. Furthermore, each Upper Division State reserves the right to exercise and protect its respective rights, obligations and entitlements related to water from the Colorado River System as it deems appropriate.
11. DISPUTE RESOLUTION: If any dispute arises regarding this Agreement, the Parties agree to meet and to attempt to resolve the dispute before seeking any remedy.
12. CONFLICTS: If there is a conflict between the provisions of this Agreement and any of its exhibits, the provisions of this Agreement shall govern.

[Execution on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

**THE UNITED STATES OF AMERICA**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Regional Director, Upper Colorado River Basin Region

**UPPER COLORADO RIVER COMMISSION**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Executive Director

**EXHIBIT 1**

***Facilitation Exhibit***

**EXHIBIT 2**

***System Conservation Implementation (“SCIA”) Agreement Templates***