

**U.S. Department of the Interior
Bureau of Reclamation**

ELOY AND MARICOPA-STANFIELD BASIN STUDY
MEMORANDUM OF AGREEMENT

The United States Department of the Interior, Bureau of Reclamation (Reclamation), and the Pinal Partnership agree to work collaboratively to conduct the Eloy and Maricopa-Stanfield (EMS) Basin Study (Study) as part of the WaterSMART Basin Study Program. This Memorandum of Agreement (Agreement) establishes the terms that will guide the performance of the Study.

The Study is located in central Arizona within the Arizona Department of Water Resources Pinal Active Management Area (Pinal AMA). Water demand in the Pinal AMA has historically been dominated by the agricultural sector. Pumped groundwater continues to be a significant water source following the advent of Colorado River water deliveries to the region via the Central Arizona Project (CAP) in 1987. Pumped groundwater use for municipal, industrial and tribal demands has continued to increase over time, exceeding natural recharge and resulting in groundwater level declines and land subsidence.

If a water shortage is declared on the Colorado River, surface water supplies delivered through the CAP system will be reduced, leading to increased groundwater pumping. To address water supply uncertainties, the Study will assess current and future water demands and supplies and develop strategies to help ensure water supply sustainability for future residential and commercial growth while preserving the agricultural economy in the Study area.

The total cost of the three-year Study is \$1,360,000. Non-Federal cost-share partners will contribute \$680,000 of in-kind services. Reclamation will contribute \$680,000 for work completed by Reclamation or its contractors.

ARTICLES

I. Definitions

- A. *Reclamation* means the United States Department of the Interior, Bureau of Reclamation.
- B. *Non-Federal Partner(s)* means Pinal Partnership Water Resources Committee; Central Arizona Project; Pinal County; Pinal County Water Augmentation Authority; Global Water Resources, Inc.; Arizona Water Company; Cities of Casa Grande and Eloy; and Maricopa-Stanfield Irrigation and Drainage District.
- C. *Party* means either Reclamation and/or Non-Federal Partner(s).
- D. *Agreement* means this Memorandum of Agreement.

- E. *Contributed Funds Agreement* means a legal agreement used to receive “all moneys from any State, municipality, corporation, association, firm, district, or individual for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided for by the reclamation law, are covered into the reclamation fund and shall be available for expenditure for the purposes for which contributed in like manner as if said sums had been specifically appropriated for said purposes.” (43 USC 395)
- F. *Cost-Share* means a specific percentage of identified charges that are allocated to specific entities or Non-Federal Partner(s).
- G. *In-kind Services* means services provided by a non-Federal entity that substantially contribute to the completion of the work task or task identified.
- H. *Confidential Information* means trade secrets or commercial or financial information that is privileged or confidential under the meaning of 5 USC 552(b)(4).
- I. *Intellectual Property* means any invention that is legally protected through patents, copyrights, trademarks and trade secrets or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country.
- J. *Key Personnel* means key team members involved in the administration, management or performance of the Study.
- K. *Subject Invention* means any invention or other intellectual property conceived or first reduced to practice under this Agreement which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country.
- L. *Plan of Study* means those activities set forth in Attachment A.
- M. *Term of Agreement* means that period set forth under Section IV, Article A.

II. Authorities and Financial Obligations

- A. Authorities: Nothing in this Agreement alters the statutory authorities or any other authorities of the Non-Federal Partner(s) or Reclamation. This Agreement is intended to facilitate cooperative efforts for mutual provision of services, support, and technical assistance by all Parties in the conduct of meeting the objectives and scope of this Agreement. This Agreement does not supersede or void existing agreements between the Non-Federal Partner(s) and Reclamation.

Reclamation's authority to enter into this Agreement:

1. Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388; 43 U.S.C. 372, et seq.) and acts amendatory thereof and supplementary thereto.
2. Title IX of the Omnibus Public Land Management Act of 2009. (P.L. 111-11, 123 Stat. 991)

Non-Federal Partners' authority to enter into this Agreement:

1. Non-Federal entities eligible to cost-share with Reclamation to conduct a Study include those with water delivery or water management authority, including: state(s), cities, or sub-divisions of a state or city; tribes or tribal water organizations; and irrigation or water districts, water conservancy districts and other similar associations.
 2. The Pinal Partnership is an Arizona non-profit corporation established in 2006 to improve research, planning and coordination of private and public efforts related to infrastructure, natural resources and community development in Pinal County. The Water Resources Committee was created by the Board of Directors to conduct research and planning directly related to water resources in Pinal County and, as such, the by-laws of the organization, through the Board of Directors, permit the Water Resources Committee to enter into this Agreement on behalf of the members. In addition, the Pinal Partnership Board of Directors further authorized entering into this Agreement by approving the proposal formally submitted by the organization to Reclamation.
 3. Letters of support for the Study were provided to the Pinal Partnership by member and non-member entities.
- B. Cost Sharing: The costs of the Study will be shared between Reclamation and the Non-Federal Partner(s), with Reclamation providing \$680,000 and the Non-Federal Partner(s) providing \$680,000. Reclamation's financial contribution to the Study shall not exceed 50 percent of the total cost. All or part of the Non-Federal Partners' share may be provided as in-kind services. Valuation of in-kind services shall be in accordance with 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87). Credit given for in-kind services performed prior to the date of enactment of this Agreement will be limited to those costs incurred after April 19, 2017, for activities which contribute to accomplishing the tasks outlined in the Study.
- C. Financial Obligations: This Agreement is not a funding document and does not authorize the obligation or transfer of funds. If a subsequently identified activity or project is identified that may require Reclamation to receive or expend funds received from the Non-Federal Partner(s) for investigations, surveys, construction

work or any other development work incident thereto involving operations similar to those provided for by the Reclamation law, a supplemental Contributed Funds Agreement, pursuant to the Sundry Civil Expenses Appropriations Act for 1922 (43 USC 395), will be executed. Funds contributed by Non-Federal Partner(s) will only be used to pay for costs incurred by Reclamation associated with completing the tasks described in this Agreement or modifications to this Agreement.

- D. Anti-Deficiency Act: All activities, responsibilities and commitments made under or pursuant to this Agreement (including any Contributed Funds Agreement under this Agreement) are subject to the availability of appropriated funds and each Agency's budget priorities, as determined by each Agency, and neither the Non-Federal Partner(s) nor Reclamation are obligated in any way under this Agreement to expend appropriations or to enter into any contract, assistance agreement, Contributed Funds agreement or other financial obligation. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

III. Publications, Reports, and Confidentiality

- A. Publications: The Parties understand and agree that this Agreement may be disclosed to the public in accordance with the Freedom of Information Act. Subject to the requirements of confidentiality and preservation of rights in Subject Inventions, either Party may publish the results of this Agreement, PROVIDED:
1. The other Party is allowed to review the manuscript at least sixty (60) days prior to submission for publication.
 2. The publication shall acknowledge this Agreement and the contributions of each Party's personnel.
 3. The final decision as to the publication content rests with the Party that writes the publication.
- B. Reports: The results of this Agreement and science, engineering and technology data that are collected, compiled and evaluated under this Agreement shall be shared and mutually interchanged by Non-Federal Partner(s) and Reclamation. A final report summarizing all data shall be submitted to Reclamation and the Non-Federal Partner(s) through the Key Personnel identified in Section V, Article C within the Term of this Agreement defined in Section IV, Article A. The final report will be in the public domain and will be published on Reclamation's website.
- C. Confidentiality: Any confidential information used in this Agreement shall be clearly marked confidential or proprietary by the submitter and shall not be disclosed by the recipient without permission of the owner. To the extent either Party orally submits its Confidential Information to the other Party, the submitting Party will prepare a document marked "CONFIDENTIAL" embodying or

identifying in reasonable detail such orally submitted Confidential Information and provide the document to the other Party within thirty (30) days of disclosure.

Neither Party shall be bound by confidentiality if the Confidential Information received from the other Party:

1. Already is available to the public or known to the recipient;
2. Becomes available to the public through no fault of the recipient; or
3. Is non-confidentially received from another Party legally entitled to it.

It shall not be a breach of this Agreement if either Party is required to disclose the Confidential Information by a valid order of a court or other government body, or as otherwise required by law, or as necessary to establish the rights of either Party under this Agreement. PROVIDED THAT the Party making the disclosure shall provide prompt prior notice thereof to the other Party to enable the other Party to seek a protective order or otherwise prevent such disclosure, and PROVIDED FURTHER THAT the Confidential Information otherwise shall continue to be confidential.

- D. Intellectual Property: Unless otherwise agreed by the Parties, custody and administration of inventions made as a consequence of, or in direct relation to, the performance of activities under this Agreement shall remain with the respective inventing Party. If an invention is made jointly by employees of the Parties or an employee of an Agency's contractor, the Parties shall consult and agree as to future actions toward establishment of patent protection for the invention.

IV. Term and Termination

- A. Term: This Agreement shall take effect upon the approval of the Parties and, unless terminated per Section IV, Article C, Termination, will expire three years from the date of the last signature to this Agreement. All Contributed Funds under this Agreement will be limited to an initial period of performance not to exceed the term of this Agreement, although they may be renewed for additional periods of performance not to exceed the term of this Agreement for any renewal period.
- B. Amendment: If either Party desires a modification in this Agreement, the Parties shall confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed and dated by the undersigned representative(s) of both Parties.
- C. Termination: Either Party may terminate this Agreement prior to its expiration at any time, with or without cause, and without incurring any liability or obligation to the other Parties, by giving the other Parties at least ninety (90) calendar days prior written notice of termination.

V. General

- A. Liability: It is understood and agreed that neither Party to this Agreement shall be responsible for any damages or injuries arising out of the conduct of activities governed by this Agreement, except to the extent that such damages and/or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents or officers. Reclamation's liability shall be limited by the Federal Tort Claims Act, 28 USC 2671, et seq.
- B. Limitations: This Agreement sets out the Parties' intentions and objectives and does not direct or apply to any person outside the Non-Federal Partner(s) and Reclamation. This Agreement is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person.
- C. Notices and Key Personnel: Notices between the Parties and copies of correspondence among the scientific and/or technical representatives of each Party that interpret or may have a bearing on the legal effect of this Agreement's terms and conditions shall be sent to the key personnel below.

1. Partner(s):

Jake Lenderking
Director of Water Resources
Global Water Resources, Inc.
Pinal Partnership Fiscal Agent
21410 N 19th Ave., Suite 220
Phoenix, AZ 85050
480-719-6977

Ron Fleming, President/CEO
Global Water Resources, Inc.
Pinal Partnership Fiscal Agent
21410 N 19th Ave., Suite 220
Phoenix, AZ 85050
480-999-5290

2. Reclamation:

Valerie Swick
Water Resources Planner
Bureau of Reclamation
6150 West Thunderbird Road
Glendale, AZ 85306
623-773-6272

Marcia Nesby
Water Resources Planner
Bureau of Reclamation
6150 West Thunderbird Road
Glendale, AZ 85306
623-773-6226

Reclamation's key personnel are authorized to perform scientific and/or technical activities falling within the Scope of this Agreement. The key personnel are not authorized to change or interpret with authority the terms and conditions of this Agreement. The roles and responsibilities of the key personnel will be as described in Section 4.1.3 in *Attachment A - Plan of Study*.

- D. Subcontracting Approval: A Party hereto desiring to obtain and use the services of a third Party via contract or otherwise shall give prior notice to the other Party, including details of the contract or other arrangement. This requirement is to assure that confidentiality is not breached and rights in Subject Inventions are not compromised.
- E. Assignment: Neither Party has the right to assign this Agreement or any of its responsibilities hereunder.
- F. Endorsement: The Non-Federal Partner(s) shall not in any way state or imply that this Agreement or the results of this Agreement is an endorsement by the Department of the Interior, Federal Government, or Reclamation of its organizational units, employees, products, or services except to the extent permission is granted by an authorized representative of Reclamation.
- G. Regulatory Compliance: Both Parties acknowledge and agree to comply with all applicable laws and regulations of the state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to the activities or projects for this Agreement. These regulatory compliance requirements may include but are not limited to, the National Environmental Policy Act (NEPA) including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office.
- H. Disputes: Any dispute arising under this Agreement, which cannot be readily resolved, shall be submitted jointly to the key personnel officials, identified in Section V, Article C, Notices and Key Personnel. Each Party agrees to seek in good faith to resolve the issue through negotiation or other forms of non-binding dispute resolution processes mutually acceptable to the Parties. Pending the resolution of any dispute or claim pursuant to this Section and Article, the Parties agree that performance of all obligations shall be pursued diligently.
- I. Force Majeure: Neither Party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such Party:
1. Which causes the Party to be unable to perform its obligations under this Agreement; and
 2. Which it has been unable to overcome by the exercise of due diligence.
 3. This includes, but is not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor disputes, failure or sabotage of either Party's facilities, or any order or injunction made by a court or public agency.

- J. Relationship between the Parties: The Parties are and shall remain independent contractors and nothing herein shall be construed to create a partnership, agency, joint venture, or teaming agreement between the Parties.
- K. Severability: The illegality or invalidity of any provision of this Agreement shall not impair, affect, or invalidate the other provisions of this Agreement.
- L. Governing Law: The construction, validity, performance, and effect of this entire Agreement shall be governed by the laws applicable to the Government of the United States of America in accordance with applicable Federal Law as interpreted by Federal Courts.
- M. Waiver: The failure of either Party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.
- N. Invalid Provision: In the event any provision of this Agreement is determined to be invalid or unenforceable under any controlling law, the invalidity or unenforceability of that provision shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.
- O. Entire Agreement: The terms and conditions contained in this Memorandum of Agreement and its appendices or attachments constitute the entire agreement and understanding by and between the Parties and shall supersede all other communications, negotiations, arrangements and agreements either oral or written, with respect to the subject matter herein.
- P. Counterparts: This Agreement may be executed in duplicate and each original shall be equally effective.

SCOPE OF WORK

I. Purpose

The EMS Basin Study is located in central Arizona within the Arizona Department of Water Resources Pinal Active Management Area (Pinal AMA) encompassing the EMS sub-basins. Water demand in the Pinal AMA has historically been dominated by the agricultural sector. Pumped groundwater continues to be a significant water source following the advent of Colorado River water deliveries to the region via the Central Arizona Project in 1987. Pumped groundwater for municipal, industrial and tribal demands has continued to increase over time, exceeding natural recharge and resulting in groundwater level declines and land subsidence.

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- B. Title IX of the Omnibus Public Land Management Act of 2009 (P.L. 111-11, 123 Stat. 991).

Non-Federal Partners' authority to enter into this Agreement:

- A. The Pinal Partnership is an Arizona non-profit corporation established in 2006 to improve research, planning and coordination of private and public efforts related to infrastructure, natural resources and community development in Pinal County. The Water Resources Committee was created by the Board of Directors to conduct research and planning directly related to water resources in Pinal County and, as such, the by-laws of the organization, through the Board of Directors, permit the Water Resources Committee to enter into this Agreement on behalf of the members. In addition, the Pinal Partnership Board of Directors further authorized entering into this Agreement by approving the proposal and formal submittal by the organization to Reclamation.
- B. Letters of support for the Study were provided to the Pinal Partnership by member and non-member entities.

III. Scope of Study

The Scope of Study will be as described in the Scope of Work in this Agreement and in Section 2.0: Study Description of *Attachment A - Plan of Study*.

IV. Strategies for Stakeholder Input

Strategies for Stakeholder Input are described in Appendix I: Communication and Outreach Plan of *Attachment A - Plan of Study*.

V. Budget Estimate and Cost-Share

A Budget Estimate for all tasks to be included in the Study, with contributions from the Non-Federal Cost-Share Partners and Reclamation, is included as Section 6.2: Cost Table in *Attachment A - Plan of Study*.

VI. Schedule and Phasing

The Schedule and Phasing for all tasks to be included in the Study is included as Section 6.1: Study Schedule in *Attachment A - Plan of Study*.

VII. Responsibilities

Reclamation and Non-Federal Cost-Share Partners responsibilities are described in Section 4.1.3 in *Attachment A - Plan of Study*.

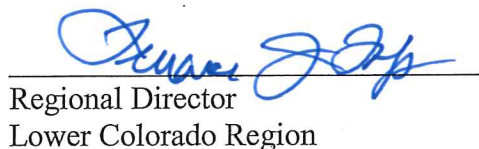
For the Non-Federal Partner(s)



Director
Pinal Partnership

10/22/18
Date

For Reclamation



Regional Director
Lower Colorado Region

11/12/18
Date

Attachment A

Plan of Study Eloy and Maricopa-Stanfield Basin Study

