DUPLICATE ORIGINAL

MEMORANDUM OF UNDERSTANDING

Between

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO
UNITED STATES SECTION
and
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
LOWER COLORADO REGION, YUMA AREA OFFICE

FOR THE PURPOSE OF COMITY WITH MEXICO AND ACHIEVING INTERNATIONAL COORDINATION AND SHARING IN THE CONSTRUCTION, MODIFICATION, OPERATION, AND MAINTENANCE OF A FLOW CONTROL SYSTEM CONSISTING OF A BIFURCATION STRUCTURE, LOGIC CONTROLLERS FOR PUMPS, A VARIABLE SPEED MOTOR CONTROLLER, AND A BYPASS CHANNEL FROM THE BOUNDARY PUMPING PLANT TO THE U.S. BYPASS DRAIN IN ORDER TO REDUCE THE SALINITY AND VARIABILITY OF FLOWS DELIVERED AT THE SOUTHERLY INTERNATIONAL BOUNDARY TO MEXICO

This Memorandum of Understanding (MOU) is made by and between the United States Section, International Boundary and Water Commission, hereinafter referred to as USIBWC and represented by the Contracting Officer of El Paso, Texas; and the United States Department of the Interior, Bureau of Reclamation, Lower Colorado Region, hereinafter referred to as Reclamation and represented by the Yuma Area Office, Area Manager of Yuma, Arizona; both of which are collectively referred to as Parties.

WITNESS HERETO:

WHEREAS, it is recognized the United States is meeting the provisions of Minute 242 regarding salinity of flows delivered to Mexico at the Southerly International Boundary (SIB); and

WHEREAS, the average monthly salinity of the water delivered at the SIB fluctuates between 1200 and 1500 parts per million (ppm) with salinity peaks of up to1800 ppm when pumps are turned on and off at the Boundary Pumping Plant (BPP); and

WHEREAS, the United States wants, as a matter of comity, to cooperate with Mexico to decrease the salinity levels and lessen the variability in flows delivered to SIB and specifically concentrate effort to reduce the salinity during the four months of September, October, November, and January, or as identified by Mexico each year, to approximately 1200 ppm; and

WHEREAS, the Parties are authorized to enter into this MOU under the Economy Act, 31 U.S.C. 1535;

NOW, THEREFORE, the USIBWC and Reclamation hereto agree as follows:

ARTICLE I - RECLAMATION SERVICES

The following services will be performed by Reclamation, or Reclamation's contractor:

A. Make necessary modifications at the BPP in the Yuma Valley for installation of a variable speed motor controller and logic controllers for four pumps in Fiscal Year (FY) 2002, subject to availability of Reclamation funding.

B. Design, procure and install the variable speed motor controller and the logic controllers at the BPP in FY2001 and FY2002, subject to availability of Reclamation funding.

C. Design and construct a bifurcation structure with three sluice gates and diversion channel of 110 cubic feet per second capacity from the BPP to the U.S. Bypass Drain in FY2001 and FY2002, subject to availability of Reclamation funding.

D. Obtain any permits and/or environmental clearances that may be required for the installation of the variable speed motor controller and logic controllers at the BPP and for the construction of a bifurcation structure and diversion channel from the BPP to the U.S. Bypass Drain.

E. During the four most critical months of the year for agriculture, as identified by Mexico in annual consultations with Reclamation, divert a portion of the Yuma Valley drainage flows to the U.S. Bypass Drain. The required deliveries to the SIB will be made up of the remaining Yuma Valley drainage flows blended with less saline groundwater pumped from the 242 well field and less saline flows from the East and West Main Canal Wasteways. The goal is to maintain salinity of flows delivered to Mexico at the SIB at approximately 1200 ppm during the four most critical months as identified by Mexico. The amount of water diverted to the U. S. Bypass Drain for salinity control purposes shall not exceed 8,000 acre-feet annually.

F. Perform the operation and maintenance (O&M) functions for the variable speed motor controller, logic controllers, bifurcation structure and the diversion channel or contract out said functions with a third party such as the Yuma County Water User's Association, who currently performs the O&M for the Yuma Valley facilities.

G. Procure, install, maintain, calibrate, and replace as needed the salinity and flow monitoring equipment at SIB.

ARTICLE II - USIBWC SERVICES

The following services will be performed by the USIBWC:

A. Provide annual funding, as described under Article IV below, for the O&M services (including capital expenditures) of the variable speed motor controller and logic controllers

at the BPP, the bifurcation structure and diversion channel from the BPP to the U.S. Bypass Drain after construction.

"Capital expenditures" for purposes of this MOU are defined as non-routine expenditures for the purchase of new equipment and major repairs to existing equipment. Reclamation shall not have authority pursuant to this MOU to bind the USIBWC to repayment of any major capital expenditures for replacements or improvements (including expansions) to the facilities described herein without prior approval by the USIBWC.

B. Daily monitoring and reporting on flow and salinity at SIB, including maximum, minimum, and average flows and salinity occurring at SIB during the day.

ARTICLE III - MAINTENANCE AND REPLACEMENT PROGRAM

Upon the installation and testing of the variable speed motor controller and logic controllers at the BPP and construction of the bifurcation structure and diversion channel from the BPP to the U.S. Bypass Drain, the USIBWC and Reclamation will develop a periodic maintenance and replacement program that will be performed on the variable speed motor controller, logic controllers, bifurcation structure, and diversion channel. Such program shall include: a) preventive maintenance program for the variable speed motor controller and logic controllers with replacement of said components as needed; b) preventive maintenance and other maintenance of the bifurcation structure and diversion channel, such as sediment removal to maintain design capability, and replacement of portions of said facilities on an as needed basis; and c) a corresponding work and inspection schedule to be performed by personnel designated by the Parties identified in Article VII.

Maintenance performed by Reclamation or its contractor shall be consistent with that performed by other agencies on similar facilities and shall be such that the facilities remain operational and in good order.

ARTICLE IV - PAYMENTS AND PERFORMANCE

Payments and performance for the O&M services and capital expenditures performed by Reclamation and/or a third party will be made as follows by the USIBWC:

A. By April 1 of each year, Reclamation will provide the USIBWC with a projected budget for the upcoming operating year (which shall be the same as the Federal Fiscal Year - Oct 1 thru Sept 30) and for the next two (2)-year funding cycle, which shall be used by the USIBWC for fiscal planning purposes. The USIBWC may provide comments, information, or other input regarding the projected budget at any time. Reclamation may amend the budget as needed during the year, provided, however, that said amendment will be submitted to the USIBWC for review and comment. The USIBWC shall have fourteen (14) days to comment on or concur with the amendment.

B. Reclamation will submit annual detailed invoices to the USIBWC showing expenditures incurred in the O&M of the facilities at the SIB (including capital expenditures) for the

previous operating year by November 1 of each year. These invoices will include a listing of the direct costs (labor, materials, supplies, etc.) and the quantities and unit rates for each. Where maintenance activities have been performed, Reclamation shall submit a description of the work performed, the reason for performing the work, the cost of the work, and, when feasible, photographs of the area before and after the work has been performed.

C. Payments to Reclamation by the USIBWC will be made for all verified costs, services, and expenses, within thirty (30) days of the date of the invoice. These amounts shall be based on the budget as concurred with by the USIBWC as described in Subparagraph IV.A above. The USIBWC payments to Reclamation shall be made via the Online Payment and Collection System.

D. Approximately sixty (60) days prior to completion of installation and/or construction of the aforementioned facilities at the SIB, Reclamation shall furnish the USIBWC a projected budget of the O&M for the facilities for the remainder of the operating year. After review and approval, the USIBWC shall provide payment to Reclamation in accordance with Subparagraph IV.B above.

ARTICLE V - DURATION

This MOU shall be effective for a period of twenty-five (25) years from the date of execution and may be extended for another period of 25 years if both Parties mutually agree to do so. Nothing in this MOU shall prevent the Parties from renegotiating its terms to provide for a reallocation of duties between the Parties; however, until such renegotiation has been agreed to, pursuant to the terms of Article VI herein, this MOU will remain in full force and effect.

ARTICLE VI - AMENDMENTS

This MOU may be modified at any time by written agreement of both Parties. Either party may request a review of the contents of this MOU, at any time, to provide recommendations for amendments.

ARTICLE VII - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between both Parties, the USIBWC assigns the Chief of its Yuma Field Office or his/her designated representative, and Reclamation assigns the Chief of the Operations Division or his/her designated representative, as the points of contact on all matters related to this MOU.

ARTICLE VIII - RESOLUTION OF DISAGREEMENTS

Any dispute arising under this MOU, which is not disposed of by agreement of the Parties, shall be submitted jointly to the signatories of this MOU. A joint decision of the signatories or their designees shall be the disposition of such dispute.

If the signatories are unable to jointly resolve a dispute within a reasonable period of time after submission of the dispute for resolution, the matter shall be submitted to Reclamation's Lower Colorado Region Headquarters and the USIBWC's Headquarters (or their appointed designees) for resolution.

Pending the resolution of any dispute or claim pursuant to this article, the Parties agree that performance of all obligations contained in this MOU shall be diligently pursued.

ARTICLE IX - SPECIAL PROVISION

The design, procurement and installation of the variable speed motor controller and logic controllers at the BPP and the design and construction of the bifurcation structure and diversion channel from the BPP to the U.S. Bypass Drain is contingent upon appropriation or allotment of funds, and obtaining all necessary permits, clearances, and/or agreements, as may be required. No liability shall accrue to Reclamation in case funds are not appropriated or allotted, or permits, clearances, or agreements cannot be obtained.

IN WITNESS WHEREOF, the Parties hereto execute this instrument to be effective when signed by both Parties.

FOR THE USIBWC

Date: 10/4/2001

Arthur G. Tuttlebee, Jr.
Contracting Officer
United States Section
International Boundary and Water Commission
United States and Mexico

Date: 10-3-01

Robert Ortega
Executive Engineer
United States Section
International Boundary and Water Commission
United States and Mexico

FOR RECLAMATION

Date: 11/20/01

Jim Cherry
Yuma Area Office Manager
Lower Colorado Region
United States Bureau of Reclamation