

**SOUTHERN NEVADA WATER AUTHORITY  
BOARD OF DIRECTORS  
AGENDA ITEM**

April 16, 1998

<b>Subject:</b> MEMORANDUM OF AGREEMENT	<b>Director's Backup</b>
<b>Petitioner:</b> DAVID A. DONNELLY, DEPUTY GENERAL MANAGER, ENGINEERING/OPERATIONS	
<b>Recommendations:</b> THAT THE BOARD OF DIRECTORS APPROVE AND AUTHORIZE THE CHAIR TO SIGN THE ATTACHED MEMORANDUM OF AGREEMENT BETWEEN THE BUREAU OF RECLAMATION AND THE AUTHORITY FOR FUNDING OF SOUTHWESTERN WILLOW FLYCATCHER STUDIES FOR AN AMOUNT NOT TO EXCEED \$75,000.	

**Fiscal Impact:**

Funding in an amount not to exceed \$75,000 is available within the Authority's Operating budget for Fiscal Year 1997/1998.

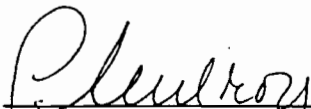
**Background:**

The Southwestern Willow Flycatcher was listed as federally endangered in March of 1995 by the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act (ESA) of 1973. The flycatcher is a migratory bird that nests in riparian corridors along the rivers and lakes of the southwestern United States. In the 1997 U.S. Fish and Wildlife Service Final Biological and Conference Opinion on Lower Colorado River Operations and Maintenance - Lake Mead to Southerly International Boundary, the Southwestern Willow Flycatcher was found to be jeopardized by the Bureau of Reclamation's (Reclamation) continued operation and maintenance of the Lower Colorado River.

Since spring of 1996, Reclamation has conducted surveys for the Southwestern Willow Flycatcher along the Lower Colorado River from the Lower Grand Canyon to the Southerly International Boundary. In 1997, the Authority entered into a Memorandum of Agreement with Reclamation to expand surveys to the Virgin River and augment surveys in the Lake Mead Delta. These expanded surveys resulted in the discovery of thirteen breeding pairs of flycatchers and thirteen young along the Virgin River. Cooperatively, additional research is needed to better define requirements and distribution of the species in the Lower Colorado River Basin, and to better characterize the effects of reservoir levels and river operations on the Lake Mead population.

Information gathered from additional research will facilitate the development of ESA and National Environmental Policy Act compliance documents related to Lake Mead and Lower Colorado River operations. The attached agreement has been reviewed and approved as to legality by the Authority's general counsel and provides for an expenditure by the Authority of \$75,000 in order to augment Reclamation's research on the Southwestern Willow Flycatcher in Lake Mead influenced areas, and along the lower Virgin and Muddy Rivers.

Respectfully submitted:



Patricia Mulroy, General Manager  
PM:DAD:KB:JM:ZM:jw 4/6/98  
Attachment

AGENDA  
ITEM #

11

MEMORANDUM of AGREEMENT NO.  
USBR NO.  
BETWEEN BUREAU OF RECLAMATION  
AND  
SOUTHERN NEVADA WATER AUTHORITY  
FOR  
FUNDING OF SOUTHWESTERN WILLOW FLYCATCHER STUDIES WITHIN THE  
LOWER COLORADO RIVER BASIN

This agreement between the Bureau of Reclamation, hereinafter referred to as "Reclamation", and Southern Nevada Water Authority, hereinafter referred to as "SNWA", has been signed pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), as amended and supplemented and the Endangered Species Act of 1973 (Pub L. 93-205; 81 Stat.884), as amended.

I. PURPOSE:

The purpose of this Agreement is to identify Reclamation and SNWA as partners in implementation and funding of Southwestern Willow Flycatcher studies along water courses within the Lower Colorado River Basin.

II. BACKGROUND:

The Southwestern Willow Flycatcher was Federally listed as Endangered in 1995. During the breeding period, this species utilizes riparian habitat along water courses in southwestern United States. SNWA proposes to participate as a partner with Reclamation in studies of Southwestern Willow Flycatcher habitat and nesting activity along water courses within the Lower Colorado River Basin. See attached Exhibit A for specific study localities.

III. NEED:

SNWA and Reclamation recognize the diverse need and uses of water and water related resources. In efforts to efficiently manage these resources, SNWA and Reclamation also understand the value of management decisions based on sound scientific knowledge. Water courses within the Lower Colorado River Basin are recognized as having a diversity of wildlife and habitats that are potentially influenced by management of water and water related resources. Obtaining sound scientific data will enable both agencies to make necessary management decisions within their specific mandated discretionary capabilities.

For these reasons, SNWA and Reclamation have a mutual interest in

determining the status of the Southwestern Willow Flycatcher in the Lower Colorado River Basin. See attached Exhibit A for specifics on work to be accomplished.

IV. COMPENSATION:

SNWA agrees to provide funds in the amount not to exceed \$75,000 to Reclamation for reimbursement of fair and reasonable costs which are allowable and allocable and incurred for goods and services furnished in support of this agreement. All funding for the study is available and it is anticipated that it will be used in the estimated amounts as shown below:

Calendar Year 1998	\$75,000
	<i>9 + 75</i>
Total Compensation	<u>\$75,000</u>
	<i>150,000</i>

SNWA agrees to advance to Reclamation payment for the total amount of \$75,000 upon receipt of an advance invoice. SNWA shall not be obligated to expend additional funds or to make any funds available for the purpose herein stated in excess of the funds made available in this Agreement.

V. SNWA WILL:

- A. Appoint a representative to serve as SNWA liaison with Reclamation and any principal investigator agreed upon by both Reclamation and SNWA.
- B. Provide field assistance as needed to successfully meet the objectives of the Agreement.
- C. Acknowledge all signatories and participating organizations in any documents and reports associated with the work herein described.

VI. RECLAMATION WILL:

- A. Contribute \$166,220 in order to meet the purposes of this agreement.
- B. Appoint a representative to serve as Reclamation liaison with Reclamation and any principal investigator agreed upon

SNWA #  
USBR #  
Memorandum of Agreement

by Reclamation and SNWA.

C. Furnish goods, services and personnel as needed to meet the requirements of this Agreement, and as specified in Exhibits A.

D. Meet with SNWA at mutually agreed upon times and places, and/or maintain regular contact (by telephone, etc.), to discuss status of the study, and to keep SNWA fully apprised of all elements of the study.

E. Acknowledge all signatories and participating organizations in any documents and reports associated with the work herein described.

F. Provide SNWA with all the raw information and data gathered and a report presenting the results of the effort as specified in Exhibit A.

#### VII. NOTICES

Any and all notices, demands or requests required or appropriate under this Agreement shall be given in writing either by personal delivery, or by registered or certified mail, return receipt requested, addressed to the following addresses:

To SNWA: Ms. Janet Monaco  
Southern Nevada Water Authority  
1001 South Valley View Boulevard  
Las Vegas, NV 89153

To Reclamation: Regional Director  
Lower Colorado Region  
Bureau of Reclamation  
Attention: Mr. Michael T. Walker  
P.O. Box 61470  
Boulder City, NV 89006-1470

When notice has been given by mail, it shall be deemed served three (3) days following deposit, postage prepaid, in the United States mail. If notice is provided by facsimile transmission, a written, postage paid, verification of information will be provided within three (3) working days. Reclamation and SNWA facsimile transmission numbers are as follows:

SNWA #  
USBR #  
Memorandum of Agreement

SNWA: Janet Monaco: 702-258-3951  
Reclamation: Michael T. Walker: 702-293-8023

The parties may change the place of notice by notifying the other party set forth herein.

VIII. CHANGES:

The parties hereto reserve the right to make changes to this Agreement by mutual agreement thereto in writing. All changes and additional work shall be by a written change order properly approved by both parties. In the event that any such change or additional work so ordered or approved causes an increase or decrease in the cost of performing the services, an equitable adjustment may be made in the compensation and the time of performance to the extent that they are affected by such change. Any increase in the amount of Total Compensation under Section IV of the Agreement must be approved by the Board of Directors of the SNWA.

IX. PROSECUTION OF WORK:

Reclamation and SNWA activities with respect to this project are contingent upon availability of funds and staff. It is mutually agreed to maintain all review and deliverable schedules to the best of Reclamation and SNWA's abilities. Further, should Reclamation encounter a situation whereby staffing or funding constraints may delay the completion of the study, Reclamation agrees to notify SNWA at the earliest possible time.

X. COMPLETION:

This Agreement shall be effective upon execution and continued until completion of the study unless extended by mutual Agreement by both parties with written confirmation.

XI. TERMINATION:

This Agreement may be terminated by either signatory hereto upon 90 days advance notice provided in writing by the canceling party to the remaining party. In the event of cancellation, Reclamation may bill for reimbursement for those unpaid fair and

SNWA #  
USBR #  
Memorandum of Agreement

reasonable costs incurred up to and including the date of notification and cancellation. In the event that this Agreement is terminated prior to exhaustion of funds, Reclamation shall return the unexpended SNWA funds to SNWA within 90 days of the date of termination.

XII. DATA, REPORTS AND MATERIALS:

All data, reports, and materials furnished to Reclamation for use in this study, shall remain jointly the property of SNWA and Reclamation.

XIII. CONTACT PERSONS:

For the purpose of this Agreement, it is agreed that Michael T. Walker, 702-293-8526, will be the representative for Reclamation. Mr. Walker, or his designee, is authorized to meet with an appointed SNWA representative and any principal investigator agreed upon by SNWA and Reclamation in the future.


In addition, for the purpose of this Agreement, it is agreed that Janet Monaco, 702-258-3812, will be the representative for SNWA. Ms. Monaco, or her designee, is authorized to meet with an appointed Reclamation representative and any principal investigator agreed upon by SNWA and Reclamation in the future.

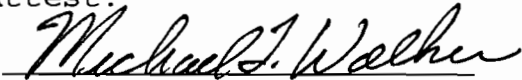
SNWA #  
USBR #  
Memorandum of Agreement

IN WITNESS WHEREOF, RECLAMATION has signed this Agreement on the \_\_\_\_\_ day of April, 1998

DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation

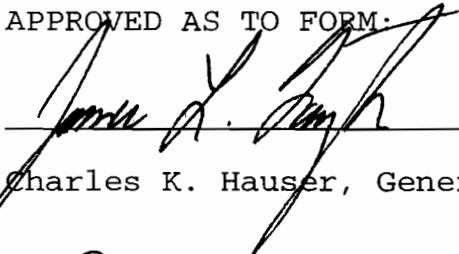
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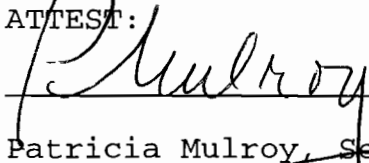
  
\_\_\_\_\_  
John Johnson,  
Resource Management and Technical  
Services Office, Acting Director

  
\_\_\_\_\_  
Michael J. Walker

THIS AGREEMENT shall be in full force and effect as of the 16<sup>th</sup> day of April, 1998, when it was duly signed by the proper office of the Southern Nevada Water Authority.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
for Charles K. Hauser, General Counsel

ATTEST:  
  
\_\_\_\_\_  
Patricia Mulroy, Secretary

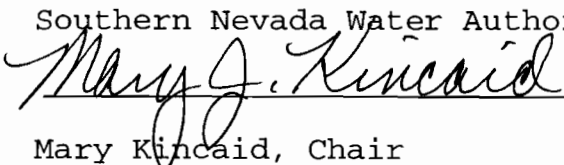
Southern Nevada Water Authority  
  
\_\_\_\_\_  
Mary Kincaid, Chair

EXHIBIT A

1998  
Statement of Work for the  
Virgin and Muddy Rivers, and Lower Grand Canyon  
Southwestern Willow Flycatcher Studies

Task Description and Associated Costs  
TASKS 1-3: VIRGIN AND MUDDY RIVERS  
TASK 4: LOWER GRAND CANYON

Task 1

Reconnaissance: prior to the protocol survey period for *Empidonax trallii extimus* Reclamation, through their consultant; the San Bernardino County Museum (SBCM), will delineate additional Virgin and Muddy River survey areas not surveyed in 1997. There will be two objectives for accomplishing this task.

A. A reconnaissance helicopter flight will be used to pinpoint new survey areas in 1998 and determine any changes along these rivers.

B. Pre-survey field reconnaissance of the Virgin and Muddy River riparian habitats to establish survey locations and assess entry.

TASK 1 SUBTOTAL           \$ 7,600

TASK 2

Surveys: the survey effort will include two objectives. Both objectives will involve the Virgin River between the confluence of Lake Mead and Littlefield, Arizona and the Muddy River delta during Spring and Summer 1998.

A. Presence/Absence: survey, following the standard protocol, survey eight sites along the Virgin River and two on the Muddy River as described above. This effort will establish presence/absence of WIFL from 10 May through 1 August 1998.



B. Intensified Survey: through this effort SBCM will establish and study riparian habitat blocks at each site occupied by WIFL in the study area to measure habitat affinities, vegetation characteristics, and disturbances (1 June- 20 August 1998).

TASK 2 SUBTOTAL           \$29,570

Task 3

Incorporation in the final report year 2 data for the southwestern willow flycatcher status and distribution along the Virgin and Muddy Rivers, submitted to SNWA.

TASK 3 SUBTOTAL           \$11,200

Task 4:

A. Initial project design, location of sample sites, database design, coordination meetings.

B. Point counts for avian species monthly for 54 census points in the Lower Grand Canyon below Separation Point.

C. Vegetation Sampling twice yearly at ten 20m transects evenly arranged across each 54 avian census point sites in the lower Grand Canyon below Separation Point.

D. Presence/Absence: survey, following the standard protocol, 25 sites for WIFL in the lower Grand Canyon below Separation Point. This effort will establish presence/ absence of WIFL from 10 May through 1 August 1998.

E. Intensified Survey: through this effort SBCM will establish and study riparian habitat blocks at each site occupied by WIFL in the study area to measure habitat affinities, vegetation characteristics, and disturbances (1 June- 20 August 1998).

F. Project coordination, data entry, analysis, GIS data prep, travel, and materials.

G. Preparation of a final report presenting data collected in year three in the lower Colorado River.

TASK 4 SUBTOTAL            \$192,850

Task 1 Subtotal:        \$ 7,600  
Task 2 Subtotal:        \$ 29,570  
Task 3 Subtotal:        \$ 11,200  
Task 4 Subtotal:        \$192,850

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Project Total:            \$241,220

Bureau of Reclamation Contribution: \$166,220  
Southern Nevada Water Authority Contribution: \$75,000