

ATTACHMENT A

The San Joaquin River Agreement

1.0 Parties to this Agreement

The parties to this San Joaquin River Agreement are:

1.1 California Resources Agency parties: California Department of Water Resources (CDWR), and California Department of Fish and Game (CDFG).

1.2 United States Department of the Interior (DOI) parties: United States Bureau of Reclamation (USBR), and United States Fish and Wildlife Service (USFWS).

1.3 San Joaquin River Group parties: San Joaquin River Group Authority (SJRGA), and its member agencies Modesto Irrigation District, Turlock Irrigation District, Merced Irrigation District, South San Joaquin Irrigation District, and Oakdale Irrigation District; the San Joaquin River Exchange Contractors Water Authority and its member agencies Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District and Columbia Canal Company; the Friant Water Users Authority on behalf of its member agencies; and the City and County of San Francisco (CCSF).

1.4 Central Valley Project/State Water Project (CVP/SWP) Export Interests parties: State Water Contractors, Kern County Water Agency, Tulare Lake Basin Water Storage District, Santa Clara Valley Water District, San Luis and Delta-Mendota Water Authority, Westlands Water District, and Metropolitan Water District of Southern California.

1.5 Environmental Community parties: Natural Heritage Institute and The Bay Institute of San Francisco.

2.0 Introduction

2.1 This San Joaquin River Agreement proposes, among other things, a San Joaquin River flow and SWP/CVP export study during the April-May Pulse Flow Period and a mechanism by which the State Water Resources Control Board (SWRCB) can issue an order to implement the San Joaquin River Portion (as defined herein) of the 1995 Water Quality Control Plan (WQCP) for the San Francisco Bay and Sacramento-San Joaquin River Delta Estuary system. As used in this Agreement, the term "implement" means to provide the flows and establish the pumping regimen called for in this Agreement which the Parties intend will provide environmental benefits in the lower San Joaquin River and Delta at a level of protection equivalent to the San Joaquin River Portion of the 1995 WQCP. The Parties anticipate that the SWRCB will make an independent determination of the protection provided by this Agreement before deciding whether to adopt this Agreement and its Implementation Plan. The

implementation package to provide the environmental benefits intended consists of these components:

2.1.1 As set forth in Paragraph 10.1, for the term of this Agreement, the USBR shall assume responsibility for the San Joaquin River Portion of the 1995 WQCP objectives that can be reasonably met through flow measures.

2.1.2 As set forth in Paragraph 10.1.2 for the term of this Agreement, the USBR and, as appropriate, the CDWR shall assume responsibility for the 1995 WQCP objectives for the San Joaquin River basin share of Delta outflow.

2.1.3 Except as provided in Paragraph 12.1, for the term of this Agreement, the USBR and the CDWR agree that the water provided by the SJRGA and its members under this Agreement shall be the entire contribution of the SJRGA, its members, and the agencies comprising any of its members to the implementation of the San Joaquin River Portion of the 1995 WQCP.

2.1.4 For the term of this Agreement, subject to qualifications and limitations set forth herein, the State Water Project/Central Valley Project (CVP/SWP) Export Interests agree to operational constraints and export targets as specified in Paragraph 6.4.

2.1.5 As set forth in paragraph 7.1, a fish barrier at the head of Old River will be installed and operated by the CDWR.

2.2 On December 15, 1994, the federal government, the State of California, and urban, agricultural and environmental interests reached agreement on a comprehensive, coordinated package of actions designed to provide interim protection to the San Francisco Bay and Sacramento-San Joaquin River Delta Estuary. That agreement is referred to as the 1994 Bay-Delta Accord, which was recently extended to December 15, 1998.

2.3 Many of the coordinated package of actions agreed upon in the 1994 Bay-Delta Accord were adopted by the SWRCB in the WQCP adopted as 95-1 WR by SWRCB Resolution No. 95-24 on May 22, 1995.

2.4 A San Joaquin River flow and SWP/CVP export study framework was developed by Doctors Bruce Herbold and Chuck Hanson. From that study framework, a collaborative effort of scientists from state and federal agencies and stakeholder groups developed the Vernalis Adaptive Management Plan (VAMP) to gather better scientific fisheries information on the lower San Joaquin River. The VAMP study referred to in this Agreement is attached as Exhibit A to this Agreement. When the VAMP study is joined with the other provisions of this Agreement, they are intended to provide environmental benefits in the lower San Joaquin River and Delta, at a level of protection equivalent to the San Joaquin River Portion of the 1995 WQCP for the duration of this Agreement.

2.5 This San Joaquin River Agreement is intended to achieve three primary objectives:

2.5.1 Implement protective measures for San Joaquin River fall-run chinook salmon within the framework of a carefully designed management and study program which is designed to achieve, in conjunction with other non-VAMP measures, a doubling of natural salmon production by improving smolt survival through the Delta. However, the Parties recognize that future salmon production cannot be guaranteed.

2.5.2 Gather scientific information on the relative effects of flows in the lower San Joaquin River, CVP and SWP export pumping rates, and operation of a fish barrier at the head of Old River on the survival and passage of salmon smolts through the Delta.

2.5.3 Provide environmental benefits in the lower San Joaquin River and Delta at a level of protection equivalent to the San Joaquin River Portion of the 1995 WQCP for the duration of this Agreement.

2.6 The 1994 Bay-Delta Accord and the VAMP study require the construction of an operable fish barrier at the head of Old River. Construction and operation of an operable Old River barrier may also require the construction of additional barriers in the south Delta to mitigate impacts of the Old River fish barrier, CVP/SWP export pumping, and other factors affecting water quality and water elevation concerns raised by in-Delta agencies. Fish barrier installation is being addressed in separate proceedings pursuant to state and federal law.

2.7 The VAMP study includes experimental operating conditions including San Joaquin River flow rates, limitations on pumping rates at the SWP and CVP export pumps located in the southern Delta, and fish barrier operations during a 31-day period during the months of April and May, beginning in 1999.

2.8 The VAMP study does not evaluate, and is not designed to control for, other factors which may be limiting fishery populations. These other factors may be material, and their effects may therefore impact the results of the VAMP study. Additional studies during the course of the VAMP study may be necessary to understand the extent to which other factors may have adverse effects on fishery populations. This Agreement imposes no obligation on the parties hereto to participate in these additional studies.

2.9 During the term of this Agreement, flow and non-flow actions, besides those provided for in the VAMP study, may take place within the San Joaquin basin to improve conditions for fisheries. These actions include but are not limited to programs under the Central Valley Project Improvement Act (CVPIA), the San Joaquin River Management Program, the "Four Pumps Agreement", and the Federal Energy Regulatory Commission (FERC) "Settlement Agreement" on the Tuolumne River. It is further anticipated that projects will be

undertaken pursuant to the "Category 3" Program, Proposition 204 funding, and the CALFED solution for the Bay-Delta Estuary. These additional programs will not affect the Parties' obligations under this Agreement, and this Agreement will not affect the Parties' participation in any such additional programs.

2.10 In addition to the fall-run Chinook salmon, there are other species of concern which may migrate through or reside in the Delta, some of which may be present in or reside in the San Joaquin River basin. The Agreement is also intended to provide benefits to various aquatic species other than salmon through the actions set forth herein. While the VAMP study is not directed to those other species, many of them may benefit from the flows provided by the VAMP study and other flow and non-flow actions to be taken.

2.11 Various San Joaquin River basin water users, the CVP/SWP export interests and others have already incurred monetary and water costs pursuant to state or federal proceedings or agreements as contributions toward the improvement of fishery populations in the San Joaquin River basin.

2.12 The Parties intend that implementation of the VAMP study not directly cause violations of the Vernalis salinity standard or violate water rights of any downstream water rights holder.

2.13 The Parties recognize that the State Board may be petitioned to review the water quality objectives established in the 1995 WQCP and the Board's order implementing the Plan as part of the triennial review process under the federal Clean Water Act.

3.0 Definitions

3.1 "San Joaquin River Agreement" - this Agreement.

3.2 "Existing Flow" - the forecasted flows in the San Joaquin River at Vernalis during the Pulse Flow Period that would exist absent the VAMP or water acquisitions, including, but not limited to the following:

- (a) tributary minimum in stream flows pursuant to Davis-Grunsky, FERC, or other regulatory agency orders existing on the date of this Agreement;
- (b) water quality or scheduled fishery releases from New Melones Reservoir, and as provided in Paragraph 5.4;
- (c) flood control releases from any non-Federal storage facility required to be made during the Pulse Flow Period pursuant to its operating protocol with the U.S. Army Corps of Engineers in effect when this Agreement is executed;
- (d) uncontrolled spills not otherwise recaptured pursuant to water right accretions (less natural depletions) to the system; and/or,
- (e) local runoff.

3.3 "Pulse Flow Period" - A period of 31 days during the months of April and May as established by the SJRTC.

3.4 "San Joaquin River Portion" - The segments of the 1995 WQCP relating to flow at Vernalis, specifically: (1) River Flows/San Joaquin River at Airport Way Bridge, Vernalis p 19; (2) San Joaquin River Salinity p. 18, (3) Southern Delta/San Joaquin River at Airport Way Bridge, Vernalis; and (4) the San Joaquin River basin share of all Delta outflow objectives.

3.5 "SJRTC" - The San Joaquin River Technical Committee described in Section 11.

3.6 "Target Flow(s)"- The flows to be achieved pursuant to Paragraphs 5.5 and 5.6.

3.7 "VAMP Implementation Plan" or "Implementation Plan" - The Planning and Operation Coordination for the Vernalis Operation Plan dated March 16, 1998 and attached as Exhibit B.

3.8 "60-20-20 Indicator" - The numeric adjunct to the SWRCB's San Joaquin Valley Water Year Hydrologic Classification used in this Agreement to establish Target Flows and certain responsibilities of the parties. Unless otherwise agreed, the most current Department of Water Resources forecast of the San Joaquin Valley Water Hydrologic Classification will be used for the then current year. The 60-20-20 indicator for the VAMP is as follows:

SJR Basin 60-20-20 Classification	60-20-20 Indicator
Wet	5
Above Normal	4
Below Normal	3
Dry	2
Critical	1

4.0 Term of Agreement

This Agreement shall terminate on December 31, 2009, unless extended pursuant to Paragraph 5.1, or terminated earlier pursuant to Section 13.

5.0 Obligations of SJRGA and its Members

5.1 Water To Be Provided For VAMP By SJRGA's Members. The SJRGA's members shall provide, during each Pulse Flow Period, the amount of water needed to achieve the Target Flow described herein, or 110,000 acre-feet, whichever is less except in years when

extraordinary events such as facilities failure or flood make the provision of such water impossible. At the option of the DOI Parties, the term of this Agreement may be extended so that the SJRGA's members shall provide water during the Pulse Flow Period in years beyond the initial term of this Agreement needed to meet Target Flows that were not met due to impossibility. Water provided by the SJRGA's members shall be determined as the sum of waters released, in excess of Existing Flow, to implement this Agreement to achieve Target Flows. Water provided by a SJRGA member shall be measured at that member's last points of control.

5.2 SJRGA Discretion. The SJRGA shall have discretion as to the method by which its members' water will be made available, but the SJRGA shall coordinate its water release planning with the USFWS and the CDFG by way of the SJRTC. The timing and amount of flow made available shall nevertheless be sufficient to meet the Parties' obligations.

5.3 Sequential Dry-Year Relaxation. During years when the sum of the current year's 60-20-20 indicator and the previous two years' 60-20-20 indicator is four (4) or less, the SJRGA's members will not be required to provide water above Existing Flow. The USBR has continuing obligations to meet San Joaquin River flows pursuant to the March 6, 1995 Biological Opinion.

5.4 Contingent Upon New Melones Operations. The risk assumed by the SJRGA's members to provide water for the VAMP is based on the assumption that the Stanislaus River will be operated consistent with USBR's Interim Plan of Operation, dated May 1, 1997. The Stanislaus River is assumed to be operated as simulated by USBR's spreadsheet model "STANMOD" which simulates the Interim Plan of Operation during the 1922-1992 hydrologic period. Critical to the amount of water provided by the SJRGA's members are the annual water allocations of the Interim Plan of Operation and the distribution of the fishery releases during the Pulse Flow Period. The Parties acknowledge, however, that the current operation of New Melones Reservoir will be superseded by the long-term Plan of Operation currently being developed through the New Melones Stakeholders Process, and which may differ from the USBR's Interim Plan of Operation. Until the long-term plan is developed, however, the USBR agrees to operate the New Melones Reservoir consistent with the Interim Plan of Operations. In the event that, under the interim or long-term plan, flows from New Melones during the Target Flow period are less than those assumed, the water provided by the SJRGA's members shall be determined as if such flows occurred. If the New Melones flows are higher, then the Management Committee shall manage the additional flows based on the recommendation of the SJRTC.

★ 5.5 Single-step Target Flow. Unless established otherwise pursuant to Paragraph 5.6, the 31-day out-migration Target Flow equals:

EXISTING FLOW (cfs)	TARGET FLOW (cfs)
0-1,999	2,000
2,000-3,199	3,200
3,200-4,449	4,450
4,450-5,699	5,700
5,700-6,999	7,000
7,000 or greater	Existing flow

When the Target Flow is 2000 cfs, the USBR will act, pursuant to Section 8, to purchase additional water necessary to fulfill the Vernalis flow requirements of existing biological opinions. When Existing Flow exceeds 7,000 cfs, the Parties will exert their best efforts to maintain a stable flow rate during the Pulse Flow Period to the extent reasonably possible. Target Flows shall be provided in accordance with the Implementation Plan.

★ 5.6 Double-step. In any year when the sum of the current year's 60-20-20 Indicator and previous year's 60-20-20 Indicator is seven (7) or greater, an annual 31-day out-migration flow target will be the Target Flow one level higher than that established by the single-step Target Flow described in Section 5.5. If achieving the double-step Target Flows requires more water than the 110,000 acre feet of water provided by the SJRGA's members, the USBR will act, pursuant to Section 8, to acquire additional water required to achieve the double-step Target Flow.

6.0 Obligations of DOI and California Resources Agency Parties

6.1 Payment. An annual payment of four million dollars (\$4,000,000) (three million dollars (\$3,000,000) from the USBR to be paid from CVPIA Restoration Fund or other sources, as available; and one million dollars (\$1,000,000) from CDWR as part of its CVPIA cost share or from other available sources, not including funds derived from SWP contractor payments), escalated annually each January to reflect the CPI-U index, shall be made by USBR to the SJRGA, so long as SJRGA and its members perform under the terms of this Agreement. The USBR will draw first upon funds not designated for environmental purposes to the extent available. Except as provided above, payments under this Section 6.1 may not be made from federal accounts designated for environmental restoration purposes. In recognition that an important source of funding for such payments will be the CVPIA Restoration Fund, the Parties shall cooperatively support efficient and cost-effective management of expenditures from the CVPIA Restoration Fund and full appropriation of the CVPIA Restoration Funds collected in an amount sufficient to support such expenditures while reserving the right to support or oppose the

use of the funds for any particular project. The funds paid to the SJRGA are intended to be substantially used to enhance efficient water management within the districts including, but not limited to water reclamation, conservation, conjunctive use, and system improvements. Use of these funds by public agencies will be documented in each agency's annual financial audit report. Payments made under this Agreement shall not be included in water rates charged by USBR or CDWR and shall not become a recoverable cost charged to any USBR or CDWR contractors. Provided, that nothing herein precludes the use of the CVPIA Restoration Fund for implementation of this Agreement. No additional payment will be required if this Agreement is extended pursuant to Paragraph 5.1. The maximum payment to be made to the SJRGA for the purposes of Paragraph 5.1 of this Agreement is \$48,000,000 (December 1997 price levels).

6.2 Contingent on Appropriations. The expenditure or advance of any money or the performance of any obligation of the DOI Parties under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the DOI and CDWR Parties in case funds are not appropriated or allotted.

6.3 Consequence of No Payment. Notwithstanding Paragraph 6.2, in any year that the required payment is not made to the SJRGA by April 1 of that year, no contributions to the VAMP Target Flows by the SJRGA will be required.

6.4 Operational Constraints and Export Targets. Except as provided in Paragraph 11.5, the CVP and SWP shall limit their exports during the Pulse Flow Period as follows:

	Vernalis Target Flows (cfs)				
	2,000	3,200	4,450	5,700	7,000
Exports					
1500	X	X	X		X
2250				X	
3000					X

The Parties agree that the export limits established in this Agreement are consistent with the existing biological opinions. In circumstances where the limits in this paragraph do not apply, the USBR and CDWR will operate their respective pumping plants in compliance with any applicable provisions of then existing water quality control plans, then existing biological opinions, the 1994 Bay-Delta Accord, and any other requirements then in effect.

6.5 Other Flow Conditions. The parties recognize that there will be years during the term of this agreement when the Existing flows will be greater than 7,000 cfs during the Pulse Flow Period and that in such years the Old River Barrier will not be in place or operated and that it may not be possible to maintain a constant flow rate at Vernalis. The DOI Parties believe,

however, that there will be value in studying the relationship between flows and export rates on salmon smolt survival during such high flow events. When such a high flow event is forecasted, the SJRTC shall attempt to develop a plan pursuant to which those studies will be conducted under this Agreement and report its recommendation to the Management Committee. In the event the SJRTC is unable to develop a plan or if the plan is rejected by the Management Committee, the DOI Parties will conduct any such studies outside of this Agreement pursuant to applicable authority, if any. If such studies are conducted during the term of this Agreement, whether or not under this Agreement, the monitoring will be carried out and the costs of monitoring will be shared pursuant to Paragraph 9.1 of this Agreement. An inability to develop an operations plan under this Agreement when the flow conditions are greater than 7,000 cfs shall not invoke Paragraph 6.7.

6.6 Operations Plan. By February 15 of each year of this Agreement, the USBR and CDWR shall develop, in cooperation with the SJRTC, an operations plan that will describe how the VAMP will be implemented in that year. If the USBR, CDWR and the SJRTC do not complete an acceptable operations plan by February 15, or if by March 1, any party objects to the operations plan, then the Parties will be notified and will meet to identify and resolve outstanding issues related to that year's operations plan. If the matter remains unresolved on April 10, the provisions of Paragraph 13.4 will be invoked.

6.7 Export Reductions Caused by the VAMP. If, on April 10, or 5 days before the Pulse Flow Period, the operations plan for that year is unacceptable to any Party, then the export limitations contained in Paragraph 6.4 shall not apply during that calendar year. This Paragraph 6.7, however, shall not limit or constrain the USBR or the CDWR in the operation of their respective project. When any Party objects to the operations plan developed as described in Paragraph 6.6, the Party objecting to the operations plan will be deemed to have invoked the provisions of Paragraph 13.2 as of April 10. All other provisions of this Agreement, particularly related to flows at Vernalis, shall remain in effect.

6.8 Old River Fish Barrier. CDWR shall install and operate a fish barrier at the head of Old River in a manner that will protect San Joaquin River chinook salmon smolts and in conjunction with the flows provided during the Pulse Flow Period. Until such time as a permanent barrier is constructed, a temporary barrier shall be installed each year, except in years when flood flows would prevent installation. Any negative impacts associated with the fish barrier at the head of Old River shall be mitigated consistent with CEQA, NEPA and ESA by the state and federal entities that are responsible for its construction. Design and operation of the barrier will be consistent with existing relevant biological opinions.

6.9 No Recirculation Obligation. Nothing in this Agreement shall obligate the DOI Parties to implement a plan under which water appropriated via the Delta Mendota Canal is released into the San Joaquin River to meet the objectives of the 1995 WQCP.

7.0 Conditions

The Parties' obligations under this Agreement are conditioned upon the entry by the California State Water Resources Control Board (SWRCB) of an order: (1) finding that the terms of this Agreement provide environmental protection at a level of protection equivalent to the Vernalis flow objectives of 1995 WQCP during the Pulse Flow Period and implementation of the remaining San Joaquin River Portion of the 1995 WQCP for the duration of this Agreement; (2) committing to expedited issuance of notice and timely completion of appropriate hearings if objection to the operations plan described in Paragraph 6.6 are unresolved after April 10, or this Agreement should terminate; (3) enforcing the obligations of the USBR and CDWR under this Agreement; (4) committing to the enforcement of Water Code Section 1707, through Water Code Sections 1725, 1435 or similar protection by prohibiting (a) unauthorized diversions of any portion of the flows provided by the SJRGA's members pursuant to this Agreement until they pass Vernalis; and, (b) unauthorized diversions of any Existing Flow between SJRGA members' last point of control and Vernalis; and, (5) adding appropriate changes to permits held by those SJRGA's members that have an obligation to provide water as needed to permit them to comply with the obligations imposed by this Agreement.

8.0 Purchase of Additional Water

8.1 Willing Sellers. Water for in-stream uses in excess of that required to be provided by the SJRGA's members under this Agreement may be purchased from willing sellers by the USBR.

8.2 Good Faith Efforts. The SJRGA and its members understand the importance of achieving needed data points as a part of the VAMP, and have pledged to work in good faith to make available additional amounts of water which may be purchased by the USBR on a willing seller/willing buyer basis for the limited purpose of increasing flows when necessary to obtain reasonably achievable additional data points; and to reach flows sufficient to reach the "Double-Step" data points described in Paragraph 5.6 and identified in the Implementation Plan. The parties understand that the SJRGA and its members cannot ensure that a market will be available at any specific time for the purchase of additional water because the SJRGA and its members cannot control market forces, hydrologic conditions, or other factors affecting the availability of marketable water.

8.3 Identification of Additional Available Water. Without in any way altering the obligations of SJRGA's members under Paragraphs 8.1 and 8.2, on or before March 1 of each year during the term of this Agreement, the SJRGA's members will meet and confer with the SJRTC for the purpose of identifying water which may be available for purchase by the USBR. The SJRGA and its members will use their best efforts to identify all water that is or will become available for sale to the USBR which could be utilized to meet the purposes of this Agreement and for USBR's compliance with the San Joaquin River Portion of the 1995 WQCP or its successor.

8.4 Additional Water from Merced. Merced Irrigation District shall provide, and the USBR shall purchase 12,500 acre feet of water above the Existing Flow delivered at the last point of control for release to the Merced River during October of all years. Such water releases shall be scheduled by Merced Irrigation District, CDFG and USFWS. The USBR shall pay Merced Irrigation District, within 30 days of invoice, as follows:

8.4.1 If the water is released from storage, the USBR shall pay \$60.00 per acre foot (\$75 per acre-foot for years in which the provisions of Section 5.3 are in effect);

8.4.2 If the water provided is re-operated flood-control releases the USBR shall pay \$15.00 per acre foot;

8.4.3 These payments shall be increased annually by the same factor set forth in Paragraph 6.1;

8.4.4 Water purchased pursuant to this Paragraph 8.4 may be scheduled for months other than October provided Merced, CDFG, and USFWS all agree.

8.5 Additional Water From Oakdale. Oakdale Irrigation District shall sell 15,000 acre-feet of water to the USBR in every year of this Agreement. The price for this water will be \$60 per acre-foot (\$75 per acre-foot for years in which the provisions of Paragraph 5.3 are in effect). In addition to the 15,000 acre-feet, Oakdale will sell the difference between the water made available to VAMP under the SJRGA division agreement and 11,000 acre-feet. The price for this water will be \$60 per acre-foot (\$75 per acre-foot for years in which the provisions of Paragraph 5.3 are in effect). It will be made available at New Melones during any month of the year as required by the USBR, and may be used for any authorized purpose of the New Melones project.

8.6 Favored Purchaser. From the date of the meeting specified in Paragraph 8.3 through the end of that year's Pulse Flow Period, a SJRGA member will not sell water, for delivery solely during the Pulse Flow Period, to a party other than the USBR at a price lower than that offered to the USBR for additional water for that year's Pulse Flow Period. This limitation on sale of water during the Pulse Flow Period does not include water needed by SJRGA's members for in-district needs; district obligations and/or operations which exist on the effective date of this Agreement; and water transfer arrangements at any price that post date this Agreement where water is transferred over a period of time that extends beyond the Pulse Flow Period. For Example: Water transferred from an SJRGA member at \$45 an acre foot is to be delivered to an adjacent agricultural water agency during the period April 1 to October 31. This will not violate USBR's Favored Purchaser status during the Pulse Flow period even if the price offered by USBR for Favored Purchaser water is \$55 per acre foot.

8.7 The USBR's status as Favored Purchaser pursuant to Paragraph 8.6 is intended to assure the USBR that, without in any way altering the obligations of the SJRGA's members

under Paragraphs 8.1 and 8.2, they will (1) use their best efforts to identify sources of water to the extent requested by the USBR ; (2) immediately notify the USBR upon becoming aware that water from willing sellers is available for sale to the USBR for use during that year's Pulse Flow Period; and, (3) not sell water that is to be delivered solely during the Pulse Flow Period at a price less than that offered to the USBR for additional water for that year's Pulse Flow Period. The USBR's status as Favored Purchaser pursuant to Paragraph 8.6 is not intended to grant a right of first refusal to the USBR over all water available for sale from SJRGA's members during, or outside the Pulse Flow Period.

9.0 Monitoring

9.1 Costs. Monitoring of fishery responses to the Target Flows is an essential component of the VAMP. The SJRTC will lead the monitoring efforts. The USBR, USFWS, CDWR and CDFG will pay half of the monitoring costs. The SJRGA, CCSF and CVP/SWP Export Interests will pay for the other half of the monitoring costs. Payments made by the DOI and California Resources Agency Parties under this Agreement shall not be included in water rates charged by USBR or CDWR and shall not become a recoverable cost charged to any USBR or CDWR contractors. Provided, that nothing herein precludes the use of the CVPIA Restoration Fund for implementation of this Agreement. The SJRGA, CCSF and CVP/SWP Export Interests will equally share their portion of monitoring costs. The SJRGA and its members, CCSF, CVP/SWP, USBR, USFWS, CDWR and CDFG will be credited for any in-kind expenses incurred in conjunction with this monitoring, and those costs incurred to support the operation of the SJRTC.

9.2 Access to Data. The Parties shall exchange all data acquired through monitoring pursuant to this Agreement. All such data shall be available to the public.

9.3 Review By IEP. The Interagency Ecological Program shall be requested to prepare an annual report on the monitoring programs in the San Joaquin River basin, including the VAMP study and any other studies relating to limiting factors.

10.0 Petition to SWRCB

10.1 Adoption of VAMP by SWRCB. All Parties shall jointly petition, prior to April 1, 1998, the SWRCB to adopt this Agreement and to implement this Agreement through an appropriate SWRCB order. The petition to adopt this Agreement will not seek to change the 1995 WQCP objectives. The petition shall make the following representations to the SWRCB:

10.1.1 In order to achieve the purposes of this Agreement, the USBR shall assume responsibility, for the term of this Agreement, for the San Joaquin River Portion of the 1995 WQCP objectives that can reasonably be met through flow measures. If this Agreement is terminated pursuant to Section 13, the USBR will operate its project in compliance with then applicable provisions of the then existing water quality control

plans, then existing biological opinions, the 1994 Bay-Delta Accord and any other requirements then in effect. The requirements of this Paragraph 10.1.1 shall survive the termination of this Agreement for the shorter of two years or until the SWRCB issues a final order implementing the San Joaquin River Portion of the 1995 WQCP.

10.1.2 In order to achieve the purposes of this Agreement, the USBR and, as appropriate, the CDWR shall assume responsibility, for the term of this Agreement, for the San Joaquin River basin share of the "Delta Outflow" objectives of the 1995 WQCP. If this Agreement is terminated pursuant to Section 13, the USBR and the CDWR will operate their respective projects in compliance with applicable provisions of the then existing water quality control plans, then existing biological opinions, the 1994 Bay-Delta Accord and any other requirements then in effect to achieve the San Joaquin River basin share of Delta Outflow. The requirements of this Paragraph 10.1.2 shall survive the termination of this Agreement for the shorter of two years or until the SWRCB issues a final order implementing the San Joaquin River Portion of the 1995 WQCP.

10.1.3 Except as provided in Section 12.1, water required under this Agreement shall be the contribution of the SJRGA, its members', and the agencies comprising any member of the SJRGA to assist the USBR and CDWR in meeting the 1995 WQCP objectives. The contribution by the SJRGA and its members to assist the USBR and CDWR in meeting the Target Flows shall be the entire contribution of the SJRGA, its members and the agencies comprising any of its members, for the implementation of the San Joaquin River Portion of the 1995 WQCP for the duration of this Agreement.

10.1.4 All NEPA and CEQA documentation shall be completed and all documents required by the SWRCB shall be submitted by the Parties by March 1, 1999.

10.2 Water Code section 1707. The petition to SWRCB shall include a Water Code section 1707 petition pursuant to Section 7.0 of this Agreement. The petition may also include requests for other changes to permit the Parties to carry out their obligations under this Agreement. The petition may be accompanied by the appropriate environmental documentation for adoption of the Agreement, or, if the SWRCB elects, it may include this Agreement as an alternative in its draft EIR for the implementation of the 1995 WQCP.

10.3 Implementation Matters. If the SWRCB fails to adopt and implement the VAMP under terms consistent with this Agreement, the Parties will cooperate to petition for a change in the SWRCB adoption or implementation. If the SWRCB does not change its adoption or implementation in a manner consistent with terms acceptable to the Parties to this Agreement, the Parties will work in good faith to negotiate a modification to this Agreement that will allow its continued implementation by the SWRCB. If that negotiation is not successful, any Party to the Agreement may withdraw from the Agreement and the remaining parties will continue to work in good faith to implement the VAMP.

10.4 Vernalis Hearing. The Parties shall ask the SWRCB to continue its hearing on the interim Vernalis flow objective specified in the 1995 WQCP. The hearing was specified in the 1994 Bay-Delta Accord and the 1995 WQCP, and is required under the Settlement For Dismissal of Action filed on September 25, 1996 in *SJTA et al vs. SWRCB* between the SWRCB and the San Joaquin River Tributaries Association. The Parties shall request that the SWRCB convene the hearing at such time as this Agreement is terminated.

10.5 Termination Requires Notice to SWRCB. In the event that this Agreement is terminated pursuant to Sections 13 or 16, the Parties agree to notify the SWRCB immediately of such termination

11.0 San Joaquin River Technical and Management Committees

11.1 SJRTC. The SJRTC will be an interagency effort to successfully implement the VAMP by undertaking the activities described in Paragraph 11.2 and other technical activities that its members deem appropriate to meet the goals of this Agreement. The SJRTC will report its findings and recommendations to the Management Committee. Each Party shall have the right to place one technical specialist on the SJRTC. The SJRTC may, on a unanimous vote, invite other technical specialists to join including representatives from local conservation organizations. In addition, the Management Committee shall appoint two other technical specialists to the SJRTC in order to provide an independent source of scientific review, and the resulting costs of such specialists shall be paid as provided in Section 9.1. The SJRTC shall make its decisions by consensus, which allows any Party representative to veto any decision or action by the SJRTC, provided that a recommendation by any member or invited technical specialist shall be forwarded to the Management Committee. Meetings of the SJRTC will be open, and materials freely available, to the public.

11.2 SJRTC Duties. The SJRTC will:

- a. Annually coordinate flow releases, export and Old River barrier operations, and use of hatchery fish, to implement the VAMP study;
- b. Determine best management of flow releases during the Pulse Flow Period to achieve Target Flows;
- c. Plan and oversee monitoring activities, in coordination with the Interagency Ecological Program and existing monitoring programs on the San Joaquin tributaries.
- d. Develop annually the Existing Flow calculation protocols;

The SJRTC shall have no authority to adjust any export limitations imposed pursuant to this Agreement or to adjust Target Flows below those set pursuant to this Agreement, but may recommend such changes to the Management Committee.

13.0 Termination

13.1 Withdrawal By San Joaquin River Group Parties. Any action which materially impairs, reduces or otherwise adversely affects the water supply used or relied upon by (a) any member of the SJRGA; (b) any of the agencies comprising a member of the SJRGA; or (c) the CCSF will be grounds for that Party's withdrawal from this Agreement, provided the remaining Parties can still satisfy this Agreement's requirements for water.

13.2 Re-negotiation: Termination. It is the intent of all parties that this Agreement is to be re-negotiated and/or terminated, as appropriate, in the event of changes to the basic water supply, water rights, assumptions, facts or circumstances upon which this Agreement is based, including without limitation breach of Section 6.8 or a dispute under Paragraph 6.7.

13.2.1 Initiating Conditions. The re-negotiation/termination provisions of Paragraphs 13.1 and 13.2 will take effect when:

13.2.1.1 there is a material change to the basic water supply, water rights, assumptions, facts or circumstances upon which this Agreement is based.

13.2.1.2 a dispute arises concerning the operations plan as described in Paragraphs 6.6 and 6.7, or a dispute arises concerning the barrier at the head of Old River as described in Paragraph 6.8.

13.2.1.3 a change in condition causes a material adverse impact on any Party's or Party's member agency's (a) water deliveries to its customers; (b) water deliveries for obligations existing when this Agreement is executed; or (c) ability to perform under this Agreement. If the change in condition only requires the release of additional water by the Party currently providing water for in stream use during the Pulse Flow Period, then this Section will not take effect provided the additional water is credited toward and does not exceed the water this Agreement requires from the SJRGA and its members.

13.2.1.4 in any year the Target Flows are not achieved except when the term of this Agreement is extended by an additional year as provided in Paragraph 5.1 with payment limited as provided in Paragraph 6.1.

13.2.1.5 when, in the judgment of the USFWS, CDFG or National Marine Fisheries Service, continuation of the VAMP study is likely to jeopardize the survival or recovery of (a) any species listed, or which is a candidate for listing, under the ESA and/or CESA or (b) any species covered by an HCP or NCCP.

11.3 Exchange of Technical Information. The SJRTC members agree to exchange technical information. Representatives to the SJRTC shall be technical specialists in the field of engineering, hydrology or aquatic sciences. Any party may also send other representative(s) to SJRTC meetings.

11.4 Other Support. The SJRGA agrees to provide administrative, clerical, and support facilities for the SJRTC activities.

11.5 Management Committee. A Management Committee shall review the reports and recommendations of the SJRTC and resolve all issues and disputes that the SJRTC cannot resolve. The Management Committee may adjust the Target Flows and export limitations contained herein, and which adjustment shall be reported to interested parties and the SWRCB and implemented unless disapproved by the SWRCB within 10 days. The Management Committee shall include one representative from each signatory to this Agreement. The Management Committee shall make its decisions by unanimous vote, which allows any representative to veto any Management Committee decision or action.

11.6 Management Committee Disputes. If the Management Committee cannot achieve a unanimous vote to resolve an issue presented to it, the Parties agree to try in good faith, on a schedule that is expedited to meet the objectives of this Agreement, to resolve the issue by mediation as described in Section 14.0.

12.0 Additional Assurances

12.1 Flow Requirements. Other than those flow objectives established for the VAMP, neither (1) the members of the SJRGA, (2) any of the agencies comprising a member of the SJRGA, nor (3) the CCSF shall have, during the term of this Agreement, any other requirements for flow at Vernalis or the San Joaquin River Portion of the 1995 WQCP, nor will they have an obligation under the 1995 WQCP to mitigate the impacts on water quality resulting solely from any reduction in flows in the San Joaquin River or its tributaries. This Agreement shall not affect the responsibility of these parties to mitigate impacts on water quality resulting from discharges of waste into the San Joaquin River or its tributaries. Based on its modeling of Vernalis flow requirements, the USBR hereby provides assurance that they will pursue acquisition of additional water to comply with the San Joaquin River Portion of the 1995 WQCP, pursuant to Section 8 of this Agreement.

12.2 Habitat Conservation Plan. The USFWS and/or CDFG will assist the Parties in the development of a Habitat Conservation Plan, NCCP or other appropriate plan, at the request of any Party.

13.2.1.6 in any year that federal appropriations for the CVPIA Restoration Fund intended to provide payment under Paragraph 6.1 fall below \$20 million.

13.2.2 Process. A Party may call for mediation in accordance with Section 14.0 to assist in the re-negotiation of this Agreement to solve the problem presented or the change in condition. A meeting of the principals of each Party will occur within 30 days of receipt of written notice to all Parties and to the SWRCB of the particular problem presented, the change in condition and the effect on the Party or the Party's member agency. The Parties will use their best efforts to re-negotiate this Agreement and resolve the problem presented.

13.2.3 Outcome. If mediation is not successful and the Parties cannot agree on how to resolve the problem within 90 days of the notice, then they may agree to terminate this Agreement immediately. If the Parties lack consensus on resolution or termination, then this Agreement terminates as of the following March 1.

13.3 Termination For Breach. If the USBR fails to pay the SJRGA as required by Paragraph 6.1, then, after a 60-day notice to cure default has been given to the USBR, the SJRGA may terminate this Agreement. If the SJRGA and its members fail to perform their obligations under this Agreement, then the USBR or the CDWR may terminate this Agreement and, except where the failure to perform is based on impossibility as described in Paragraph 5.1, require the SJRGA to pay back the money the USBR paid for the year that SJRGA and its members failed to meet their obligations.

13.4 Notice of Termination or Likelihood of Termination to SWRCB. If objection has been made by a Party to the operations plan described in Paragraph 6.6, or there has been termination of this Agreement, or after 90 days of re-negotiation without resolution as provided in Section 13.2, the Parties shall promptly advise the SWRCB.

14.0 Mediation

14.1 Resolution of Disputes. Resolution of disputes, and issues which a Party believes may subject this Agreement to Termination, shall first be submitted to a mediator, mutually selected by the Parties, with experience in water-related disputes. The Parties shall request of the SWRCB, in the order it issues pursuant to Section 10, to appoint the SWRCB Executive Director as mediator, without cost to the Parties, for Management Committee disputes on issues critical to meeting Target Flows during the Pulse Flow Period. The Parties will use their best efforts to resolve the issues within 48 hours.

14.2 Resolution of Non-Critical Issues. Mediation of issues that are not critical to meeting Target Flows during the Pulse Flow Period shall be on the same schedule as the

process described in Paragraphs 13.2.2 and 13.2.3.

14.3 Mediation Costs. Mediation costs shall be divided as follows: 50% paid by the Party or Parties asserting a veto and 50% by the remaining Party or Parties. Provided that, the environmental community parties shall not be responsible for mediation costs if a veto is asserted by any other party. Provided, further that the environmental community parties shall not be responsible for mediation costs in excess of \$2,000 if a veto is asserted solely by environmental community parties. In this event, mediation costs in excess of \$2,000 shall be paid 50% by the DOI and California Resources Agency Parties, and 50% by the SJRGA, CCSF, and CVP/SWP Parties, share and share alike. If mediation is not completed during the specified time schedule, then issues within the existing jurisdiction of any state or federal agency shall be submitted to such agency. This section shall not be construed to expand or limit in any way the jurisdiction of any state or federal agency.

15.0 Effect of this Agreement on Other Matters

15.1 As a Precedent. Nothing in this Agreement, and nothing incorporated by reference into the terms of this Agreement, is intended or shall be construed as a precedent or other basis for any argument that the participants to this Agreement have waived or compromised their rights which may be available under state or federal law except as to the matters addressed in this Agreement.

15.2 As an Admission. Nothing in this Agreement shall be construed as an admission by any Party that such Party has obligations relative to the protection of fishery or other resources and/or the maintenance of water quality standards in the Delta. Similarly, nothing in this Agreement shall be construed or used in an effort to demonstrate that any of the Parties has surplus water or water which is not being beneficially used by such Party.

15.3 As to Jurisdiction of SWRCB. Nothing contained in this Agreement shall constitute the acknowledgment by a Party of any jurisdiction of the SWRCB over the Party outside the terms of this Agreement or SWRCB implementation of the VAMP, nor does participation in this Agreement waive any defenses that a Party may have concerning the SWRCB's jurisdiction. Further, participation in this Agreement shall not, in and of itself, give rise to SWRCB jurisdiction over the Parties for matters not expressly stated in this Agreement.

15.4 As Compromise of Disputed Claims. It is understood and agreed that this Agreement is the result of a good faith compromise settlement of disputed claims regarding the obligations of Parties to provide water required to implement the 1995 WQCP, and that this Agreement shall not be taken or construed to be an admission of any obligation or responsibility to provide that water. Each of the Parties hereto is entering into this Agreement to avoid the expense, disruption and uncertainty of a contested water right proceeding before SWRCB and the courts.

16.0 No Intended Use of Friant Water

16.1 Pursuant to this Agreement, the USBR has contractually undertaken certain obligations relative to the provision of San Joaquin River water and the implementation of the San Joaquin River Portion of the 1995 WQCP, including without limitation the obligations described in Paragraphs 5.3, 10.1.1, 10.1.2. and 12.3. The Parties do not intend that these obligations of the USBR shall be satisfied using water released for that purpose from Friant Dam or which is otherwise intended for use within the Friant Division of the Central Valley Project, other than water acquired from willing sellers.

16.2 In furtherance of that intent, if the USBR satisfies any of its obligations under this Agreement using water released from Friant Dam for that purpose, or which is otherwise intended for use within the Friant Division, other than water acquired from willing sellers, this Agreement shall immediately terminate upon written notice from the Friant Water Users Authority to the other Parties notwithstanding the provisions of Section 13 or any other provisions of this Agreement.

16.3 Upon such termination, for the intended term of this Agreement none of the other Parties shall enter into an agreement intended to accomplish the purposes of this Agreement as set forth in Section 2 without the participation and agreement of the Friant Water Users Authority; Provided, that nothing in this Paragraph 16.3 shall preclude the USBR from acquiring water from willing sellers.

16.4 Nothing in this Agreement is intended to alter the positions of any Party in *Natural Resources Defense Council, et al vs. Patterson, et al.* or other pending judicial proceedings.

17.0 Specific Performance

So long as the USBR and CDWR have made the payments to the SJRGA required by this Agreement, the refusal by the SJRGA or its members to provide the water required by this Agreement shall entitle a Party to an order of specific performance in a manner which gives effect to the goals of the VAMP and this Agreement.

18.0 Representation By Counsel

This Agreement is entered into freely and voluntarily. The parties hereto acknowledge that they have been represented by counsel of their own choice, or that they have had the opportunity to consult with counsel of their own choosing, in the negotiations that preceded the execution of this Agreement and in connection with the preparation and execution of this Agreement. Each of the parties hereto executes this Agreement with full knowledge of its significance and with the express intent of effecting its legal consequences.

19.0 Entire Agreement

This Agreement constitutes the entire Agreement between the parties pertaining to the settlement of disputes and obligations between them with respect to obligations under the 1995 WQCP. This Agreement supersedes all prior and contemporaneous agreements and/or obligations concerning those obligations which are merged into this Agreement. Each party has made its own independent investigation of the matters settled, has been advised concerning the terms of this Agreement by counsel of its choice or has had an opportunity to be so advised, and is not relying on any representation not specified herein.

20.0 Applicable Law

This Agreement shall be construed under and shall be deemed to be governed by the laws of the State of California and of the United States, without giving effect to any principles of conflicts of law if such principles would operate to construe this Agreement under the laws of any other jurisdiction.

21.0 Construction of Agreement

This Agreement is the product of negotiation and preparation by and among each party hereto and its attorneys. Therefore, the parties acknowledge and agree that this Agreement shall not be deemed to have been prepared or drafted by any one party or another. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

22.0 Modification of Agreement

No supplement, modification, waiver, or amendment with respect to this Agreement shall be binding unless executed in writing by the party against whom enforcement of such supplement, modification, waiver or amendment is sought.

23.0 Counterparts of Agreement

This Agreement may be signed in any number of counterparts by the parties hereto, each of which shall be deemed to be an original, and all of which together shall be deemed one and the same instrument. This Agreement, if executed in counterparts, shall be valid and binding on a party as if fully executed all on one copy.

24.0 Signatories' Authority

The signatories to this Agreement on behalf of all of the parties hereto warrant and represent that they have authority to execute this Agreement and to bind the parties on whose behalf they execute this Agreement.

25.0 Reasonable Cooperation

The parties hereto shall reasonably cooperate with each other, including the execution of all necessary further documents, if any, to carry out the purpose and intent of this Agreement.

26.0 Effective Date

The parties hereto deem this Agreement to be signed and of binding legal effect as of the date on which the last signatory hereto signs the Agreement or March 1, 1999, whichever is earlier.

27.0 Notice to Parties

All notices required under or regarding this Agreement shall be made in writing addressed as provided in the Party address list attached hereto as Exhibit C.

28.0 Federal and State Agency Obligations

Nothing in this Agreement is intended to limit the authority of the DOI Parties or the California Resource Agency Parties to fulfill their responsibilities under federal or state law. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the DOI Parties or the California Resource Agency Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the latest day and the year listed hereafter or March 1, 1999, whichever is earlier.

Dated: *April 12, 1999*

By:  _____
United States Bureau of Reclamation

Dated:

By: _____
United States Fish and Wildlife Service

Dated:

By: _____
California Department of Water Resources

Dated:

By: _____
California Department of Fish and Game

Dated: 4-5-99

By: Allen Short
San Joaquin River Group Authority

Dated: 4-5-99

By: Allen Short
Modesto Irrigation District

Dated: 4-5-99

By: Paul Jones
Turlock Irrigation District

Dated: 4/5/99

By: Paul Jones
Merced Irrigation District

Dated: 4-5-99

By: Richard Martin
South San Joaquin Irrigation District

Dated:

By: Wayne Sparan
Oakdale Irrigation District

Dated: 4-8-99

By: D. Chedoke
San Joaquin River Exchange Contractors
Water Authority

Dated: 4-8-99

By: John B. Britton
Central California Irrigation District

Dated: 4-9-99

By: John B. Britton
Firebaugh Canal Water District

Dated: 4/8/99

By: Donald S. [Signature]
Columbia Canal Company

Dated: 4-8-99

By: [Signature]
San Luis Canal Company

Dated: 4/6/99

By: 
Friant Water Users Authority

Dated: By: _____
Public Utilities Commission of the
of the City and County of San Francisco

Dated: By: _____
State Water Contractors

Dated: By: _____
Kern County Water Agency

Dated: By: _____
Tulare Lake Basin Water Storage District

Dated: By: _____
San Luis and Delta-Mendota Water
Authority

Dated: By: _____
Westlands Water District

Dated: By: _____
Metropolitan Water District of Southern
California

Dated: By: _____
Natural Heritage Institute

Dated: By: _____
The Bay Institute of San Francisco

Dated: By: _____
Santa Clara Valley Water District

WATER TRANSFER AGREEMENT
BY AND BETWEEN OAKDALE IRRIGATION DISTRICT, SOUTH SAN
JOAQUIN IRRIGATION DISTRICT AND THE SAN LUIS & DELTA
MENDOTA WATER AUTHORITY

This Agreement is entered into this 10 day of July, 2009, between and among the Oakdale Irrigation District (“OID”), the South San Joaquin Irrigation District (“SSJID”), collectively referred to as “Districts,” and the San Luis & Delta Mendota Water Authority, hereinafter referred to either as “Purchaser” or “Water Authority”.

RECITALS

WHEREAS, Districts are California irrigation districts operating under and by virtue of Division 11 of the California Water Code, and

WHEREAS, Purchaser is a California joint power authority operating under and by virtue of Section 6500, et seq., of the California Government Code; and

WHEREAS, Purchaser’s member units are 29 water agencies representing approximately 2,100,000 acres of land within the western San Joaquin Valley, San Benito and Santa Clara Counties that receive water from the federal Central Valley Project (“CVP”) under water service or exchange contracts; and

WHEREAS, Districts are co-owners of certain water rights on the Stanislaus River, including pre-1914 appropriative rights to divert water from the Stanislaus River for irrigation of the lands within the Districts, and various post-1914 appropriative rights to store Stanislaus River in various reservoirs for diversion to irrigate lands within the Districts, as well as to generate electrical power; and

WHEREAS, Purchaser’s member units use water for irrigation and water transferred under this Agreement will be applied for irrigation purposes; and

WHEREAS, because of hydrologic conditions and/or regulatory constraints, member units of the Purchaser with water service contracts have received an allocation of only 10% of their full contractual supplies from the United States Bureau of Reclamation (“USBR”) and are highly unlikely to receive their full contractual allocations during the 2009 water year ; and

WHEREAS, due to changes in land use patterns, ongoing conservation measures, facility improvements and other measures, Districts have water that is surplus to the needs of their landowners and water users in accordance with California Water Code Section 22259; and

WHEREAS, on behalf of Water Authority member units who participate in its 2009 Pooled Water Transfer Memorandum of Agreement, Purchaser intends by this Agreement to obtain additional surface water for use for irrigation in 2009 to compensate for an anticipated lack of delivery from the CVP ; and

WHEREAS, by providing water to Purchaser under this Agreement, Districts intend to (1) keep agriculture viable within their districts and benefit Districts' water users and landowners, (2) provide for the reasonable and beneficial use of water supplies that are temporarily surplus to the needs of Districts' landowners and customers, (3) safeguard the Districts' water rights for the long-term by insuring that such rights are continually put to reasonable and beneficial use, and (4) provide water determined to be temporarily surplus to their needs to Purchaser for reasonable and beneficial use.

NOW, THEREFORE, the Districts and Purchaser, on the terms and conditions herein set forth, agree as follows:

AGREEMENT

1. **DEFINITIONS**: The following definitions shall govern this agreement:
 - a. "Agreement-Water" is the surface water which is surplus to the current needs of the landowners and water users of the Districts in accordance with California Water Code Section 22259, which is to be transferred to the Purchasers by this Agreement.
 - b. "Delivery" means that the Agreement-Water is made available to Purchasers at Goodwin Dam on the schedule described in Paragraph 11 of this Agreement. This definition is intended to include the grammatical variations of the term "delivery" including "deliver" and "delivered", where such term references water.
2. **TERM**: This Agreement shall expire on September 30, 2009, unless terminated sooner by written agreement of the parties.
3. **AGREEMENT TO TRANSFER**: The Districts will sell and deliver Agreement-Water during the term of this Agreement for reasonable and beneficial uses in the quantities described and subject to the terms and conditions of this Agreement. Agreement-Water will be used within the boundaries of Purchasers' member units.
4. **QUANTITY**: Districts agree to sell and deliver to Purchaser 45,000 acre-feet of water, reduced by the amount of water delivered to Purchaser in May 2009, pursuant to that certain 2009 WATER TRANSFER Between Oakdale and South San Joaquin Irrigation Districts and San Luis & Delta-Mendota Water Authority TERM SHEET dated May 5, 2009.

5. **PURCHASE PRICE:** The Purchaser agrees to purchase and pay for the Agreement-Water at a price based upon the CVP allocation to south-of Delta water service contractors for Irrigation as of May 15, 2009 for Agreement-Water delivered. The price shall be determined as follows:

A. If the May 15, 2009 allocation is between 0% and 14% inclusive, the price will be \$250.00 per acre-foot;

B. If the May 15, 2009 allocation is between 15% and 24% inclusive, the price will be \$225.00 per acre-foot;

C. If the May 15, 2009 allocation is between 25 and 34% inclusive, the price will be \$200.00 per acre foot.

6. **PAYMENT:**

a) Districts shall bill Purchaser for the water delivered. Purchaser shall pay within thirty days of receipt of the invoice.

b) Each payment to be made by Purchaser pursuant to this Agreement will be made based upon a delivery of 25,000 acre-feet by SSJID, and based upon a delivery of 20,000 acre-feet by OID, i.e., 55.6% to SSJID and 44.4% to OID. The respective payments will be made to:

South San Joaquin Irrigation District
11011 E. Highway 20
Manteca, California 95336

Oakdale Irrigation District
1205 East "F" Street
Oakdale, California 95361

7. **INTEREST:** Purchaser shall pay the Districts interest at the annual interest rate of 10% on any charges that remain unpaid thirty (30) days beyond the due date.

8. **WATER QUALITY:** The Districts make no warranty or representations as to the quality or fitness for use of the Agreement-Water sold and delivered to Purchaser. Purchaser shall be responsible for all necessary measures at its own expense for the testing, treatment, and other steps required for the intended uses of the Agreement-Water by the Purchaser.

9. **WATER MEASUREMENT:** The Agreement-Water will be measured by Districts at Goodwin Dam.

10. **LIMITING CONDITIONS:** The Districts' obligations to deliver the quantity of water specified in Paragraph 4 of this Agreement will, at all times, be subject and subordinate to the following conditions: (1) the terms and conditions of their water rights; (2) the 1988 Agreement and Stipulation (the "1988 Agreement") with the United States Bureau of Reclamation (the "Bureau"), as it now exists and as modified from time to time; (3) the Tulloch Enhancement Agreement with PG&E, as it now exists and as

modified from time to time; (4) the Goodwin Agreement, as it now exists and as modified from time to time; (5) the terms and conditions of Federal Energy Regulatory Commission licenses, as they now exist, and as they may be amended and/or renewed upon relicensing including, but not limited to, those held for Tulloch and Goodwin Dams; (6) the rights of landowners, within the boundaries of OID or SSJID as of the initial delivery of Agreement-Water hereunder, to the beneficial use of their respective District's water; (7) applicable federal and state laws now in existence and as modified from time to time, affecting the Joint Districts' rights or obligations, and (8) the rights of the cities of Lathrop, Manteca, Escalon and Tracy pursuant to Water Supply Development Agreement with SSJID. The conditions described in 1-8, inclusive, above, are collectively referred to as the "Limiting Conditions." Nothing in this Agreement shall be construed so as to contradict, conflict with or otherwise be contrary to the provisions of any of the Limiting Conditions; and in the event of any conflict between any of the Limiting Conditions and this Agreement, the Limiting Condition(s) shall control, and Districts shall not be deemed to be in violation of this Agreement by any modifications of the Agreement, including reduced supply for Purchaser, required to ensure compliance with any of the Limiting Conditions.

11. **AGREEMENT-WATER DELIVERY:** Joint Districts will deliver Agreement-Water to Purchasers in the amount listed in Paragraph 5 on a schedule developed by Purchaser in coordination with the USBR and the Department of Water Resources, to assure, to the extent possible, that delivered Agreement-Water can be pumped at Harvey O. Banks pumping plant for Purchaser's member units. Districts, Purchaser, the USBR or the DWR may modify the scheduled on 24 hours' notice. Delivery shall be subject to the limitations described in Paragraphs 12 and 18 of this Agreement.

12. **WATER SUPPLY REDUCTIONS:** Water supply to be delivered to Purchaser under this Agreement may be reduced by Districts for any of the following reasons: the Limiting Conditions; failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to the Districts; diversions outside the control of Districts which may hereafter be authorized for others from the North, Middle or South Forks of the Stanislaus River, and any action, legislation, ruling or determination adverse to the Districts affecting the Agreement and beyond the reasonable control of the Districts. Districts shall make good faith efforts to oppose such reductions, but Purchaser agrees that Districts shall not be liable for reductions of supply in this Agreement due to such causes. Purchaser shall have no obligation to pay for Agreement-Water that is not delivered because of a reduction of supply caused by factors listed in this Paragraph.

13. **DIVERSION COSTS:** All permitting, construction, reconstruction, and maintenance costs for facilities necessary or used to divert Agreement-Water from the once it is delivered by Districts at Goodwin Dam shall be borne solely by Purchaser. Purchaser is solely responsible for all costs associated with treatment, diversion headworks, pumping facilities, etc., to divert, convey, transport, treat, and deliver Agreement-Water to the Purchaser's member units.

14. **WATER RIGHTS:** Districts intend that the Agreement-Water shall be from their pre-1914 water right of 1816.6 cfs. As such, the Districts do not intend to seek the approval of this transfer from the California State Water Resources Control Board. If approval of the transfer from Districts to Purchaser is sought from the California State Water Resources Control Board, Districts shall inform Purchaser of any approvals which Districts consider necessary and of the process they will follow to obtain any necessary approvals, and provide a justification for the process selected or for the conclusion that no approvals are required.

15. **ENVIRONMENTAL REVIEW:** Purchaser and Districts will cooperate regarding the preparation of any and all documents the parties determine necessary to comply with CEQA. Districts understand that review under the National Environmental Policy Act ("NEPA") may need to be performed. Districts agree to cooperate with Purchaser, the USBR, and any other agency or entity preparing documents for purposes of complying with NEPA.

16. **TERMINATION:** The Parties to this Agreement shall have the right of termination as set forth in this paragraph.

A. **Districts:**

- (1) If regulatory approvals and final CEQA and/or NEPA action are not satisfied by July 1, 2009, either OID or SSJID or both, may by written notice to the Water Authority, cancel this Agreement as to their respective participation herein, unless such parties agree to extend the date for such approvals and environmental review.
- (2) Should the State Water Resources Control Board, the USBR, the United States Corps of Engineers, or any other state or federal agency or any state or federal court, exercising jurisdiction over this Agreement and/or the operations of Districts or their water rights, impose any requirements, limitations, operational restrictions, fees, charges, costs, water rights restrictions or operating criteria upon the Districts in whole or in part as a result of the transfer of Agreement-Water under this Agreement, then Districts may, in their sole and unlimited discretions, determine that compliance with such regulatory action is not in the interest of Districts, and terminate this Agreement. Written notice shall be provided to the Purchaser.
- (3) If, in the reasonable judgment of either of the Districts, the costs of litigation, the restrictions imposed in the approvals of any regulatory agency, mitigation measures imposed by any agency pursuant to CEQA or NEPA, or any relief afforded to plaintiffs in an action brought in state or federal court involving this Agreement

are too burdensome in relation to the benefits to be received under this Agreement, then either OID or SSJID may terminate this Agreement as to their respective involvement.

B. Purchaser:

- (1) If regulatory approvals and final CEQA and/or NEPA action are not satisfied by July 1, 2009, Purchaser may, by written notice to the Districts, request to extend the date or cancel this Agreement.
- (2) Should the United States Corps of Engineers, the United States Fish and Wildlife Service, or any other state or federal agency or any state or federal court, exercising jurisdiction over this Agreement and/or operations of the any facility of the CVP or SWP, impose any requirements, limitations, operations restrictions, fees, charges, costs, or operating criteria upon the Purchaser in whole or in part as a result of the transfer of the Agreement-Water under this Agreement, then Purchaser, in its sole and unlimited discretions, may determine that compliance with such regulatory action is not in the interest of the Purchaser, and terminate this Agreement. Written notice shall be provided to the Districts.
- (3) If, in the reasonable judgment of Purchaser, the costs of litigation, the restrictions imposed in the approvals of any regulatory agency, mitigation measures imposed by any agency pursuant to CEQA or NEPA, or any relief afforded to plaintiffs in an action brought in state or federal court involving this Agreement are too burdensome in relation to the benefits to be received under this Agreement, then Purchaser may terminate this Agreement.

- C. Notice. A Party shall give 10 days advance written notice to all other Parties prior to terminating this Agreement. Prior to giving such notice, the Party electing to terminate pursuant this provision shall have met and conferred with representatives of the other Parties to discuss and attempt to reasonably resolve the concerns.

In the event of termination under this paragraph, the Parties shall thereafter be under no further obligation or responsibility hereunder, and will release each other party from further obligations under this Agreement, except for their respective shares of costs incurred prior to the effective date of termination.

17. **LITIGATION COSTS:** Subject to Paragraph 19, Districts agree to defend their own interests in any litigation or regulatory action challenging the validity of Districts' water rights. The Parties shall each defend their own interests, and bear their own costs in litigation or regulatory action involving this Agreement, including environmental compliance and transferability of the water. All parties agree to reasonably cooperate

with each other in the defense of any litigation that may be filed as a result of this Agreement.

18. **CONDITIONS TO DELIVERY OF WATER:** It is a condition to the obligations of Districts to deliver water to Purchaser and to the obligation of Purchaser to pay for Agreement-Water that the USBR and/or the DWR approve the use of facilities that it owns, or has an interest in, to store, pump, convey and deliver the Agreement-Water to and on the behalf of Purchaser. If such approval is not provided, Purchaser shall have no further obligations under this Agreement, except to pay its respective share of administrative costs incurred prior to the effective date of termination.

19. **EXPENSES:** Purchaser shall reimburse Districts for 50% of their reasonable, out-of-pocket expenses, including but not limited to legal, environmental, engineering consultant's fees, expenses incurred to obtain any and all necessary approvals required to effectuate the Agreement, and to defend against any litigation challenging the Agreement or the approvals, water rights or environmental reviews associated with the Agreement, not to exceed a total of \$20,000.

20. **COOPERATION:** To the extent reasonably required, each Party to this Agreement shall, in good faith, assist the other in obtaining all such necessary approvals and preparation of required environmental documents. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.

21. **WAIVER OR RIGHTS:** Any waiver, at any time, by any Party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

22. **ASSIGNMENT:** This Agreement is entered into in reliance on water supplies available to Districts the credit of Purchaser, and the need of Purchaser's member units for water, and therefore any attempted assignment of this Agreement in whole or in part without the prior written consent of all Parties hereto is void.

23. **NOTICES:** All notices that are required, either expressly or by implication, to be given by any Party to the other under this Agreement shall be signed for by OID, SSJID and Purchaser by such officers as they may, from time, authorize in writing to so act.

Any notices to Parties required by this Agreement shall be delivered or mailed, United States first-class postage prepaid, addressed as follows:

OAKDALE IRRIGATION DISTRICT

General Manager/Secretary
Oakdale Irrigation District
1205 East "F" Street
Oakdale, CA 95361

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

General Manager/Secretary
South San Joaquin Irrigation District
11011 East Highway 120
Manteca, CA 95336

SAN LUIS & DELTA MENDOTA WATER AUTHORITY

Daniel Nelson, Executive Director
San Luis & Delta Mendota Water Authority
P.O. Box 2157
Los Banos, CA 93635

Notice shall be deemed given (a) two calendar days following mailing via regular or certified mail, return receipt requested, (b) one business day after deposit with any one-day delivery service assuring "next day" delivery, (c) upon actual receipt of notice, or (d) upon transmission, if by facsimile, whichever is earlier. The Parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

24. **APPROVALS**: Where the terms of this Agreement provide for action to be based upon a judgment, approval, review or determination of any Party, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

25. **ARBITRATION**: In the event of a dispute between the Parties as to any right, alleged right, obligation or alleged obligation under this Agreement, the Parties shall make a good faith effort to resolve the dispute. In the event that a resolution of the dispute cannot be reached despite these efforts, any Party may declare an impasse and its intent to submit the matter to arbitration. Any such arbitration shall be held and conducted before one arbitrator who shall be selected by mutual agreement of the Parties. If agreement is not reached on the selection of an arbitrator within fifteen (15) days after a Party has notified the other Parties of its election to submit to arbitration, then such arbitrator shall be appointed by the presiding judge of the superior court of Stanislaus County upon application of either Party hereto. The award or decision of the arbitrator shall be final and judgment may be entered thereon. The provisions of Title 9 of Part 3 of the California Code of Civil Procedure, including Section 1283.05, and successor statutes, permitting expanded discovery proceedings shall be applicable to all disputes which are arbitrated pursuant to this paragraph.

26. **OTHER AGREEMENTS**: Nothing contained herein restricts the Districts from providing water services and sales to others as authorized by law which do not unreasonably interfere with Districts' obligation hereunder.

27. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement between the Districts and Purchasers and supersedes any oral agreement, statement or promise between them relating to the subject matter of the Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by all Parties to be effective.

28. **EFFECTIVE DATE:** The effective day and date of this Agreement shall be the day and date first above written.

29. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

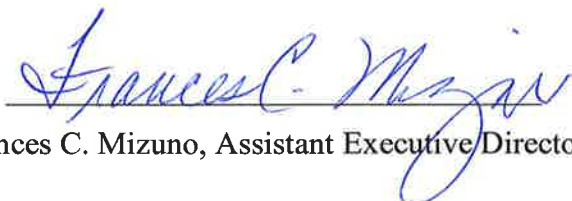
30. **GENERAL INTERPRETATION:** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any person.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

PURCHASER:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By:



Frances C. Mizuno, Assistant Executive Director

DISTRICTS:

OAKDALE IRRIGATION DISTRICT

By:  _____
Steve Knell, General Manager

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By:  _____
Jeff Shields, General Manager

**AMENDMENT TO THE SAN JOAQUIN RIVER AGREEMENT TO EXTEND
TERM OF AGREEMENT**

WHEREAS, on March 1, 1999, the San Joaquin River Group Authority and its member agencies (Modesto Irrigation District, Turlock Irrigation District, Merced Irrigation District, South San Joaquin Irrigation District, the Oakdale Irrigation District, the San Joaquin River Exchange Contractors Water Authority, and its member agencies, Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District and Columbia Canal Company), the Friant Water Users Authority, the City and County of San Francisco (hereinafter referred to collectively as “the SJRGA”), the United States Bureau of Reclamation and the United States Fish and Wildlife Service (hereinafter referred to collectively as “DOI”), the California Department of Water Resources and the California Department of Fish and Game (hereinafter referred to collectively as “the State”), the State Water Contractors (“SWC”), Kern County Water Agency, Tulare Lake Basin Water Storage District, Santa Clara Valley Water District, San Luis-Delta Mendota Water Authority (“SLDMWA”), Westlands Water District, Metropolitan Water District of Southern California, and the Natural Heritage Institute (collectively referred to as “the Parties”) entered into an agreement known as “The San Joaquin River Agreement (SJRA);” and

WHEREAS, the SJRA expires by its own terms on December 31, 2009; and

WHEREAS, the environmental analysis prepared for the SJRA (Meeting Flow Objectives for the San Joaquin River Agreement, 1999-2010) is effective through December 31, 2010; and

WHEREAS, Paragraph 22.0 of the SJRA requires that any modification thereto be made in writing and signed by the parties against whom enforcement of such modification is sought.

NOW, THEREFORE, the SJRGA and DOI hereby agree to modify the San Joaquin River Agreement as follows:

1. Paragraph 4.0 of the March 1, 1999, SJRA is modified to read: “This Agreement shall terminate on December 31, 2010, unless extended pursuant to Paragraph 5.1 or Paragraph 22, or terminated earlier pursuant to Section 13.”
2. Paragraph 5.3 of the SJRGA is modified as follows: (a) at the end of the first sentence, add: “Such a year shall be referenced as an “Off Ramp Year.”; (b) change the second sentence to read “The USBR has continuing obligations to meet San Joaquin River flows pursuant to the applicable Biological Opinions.”
3. Payment for 2010 will be made in accordance with Paragraph 6.1 of the SJRA.

5. Paragraph 3.2, is modified to read as follows:

“ ‘Existing Flow’ – the forecasted flows in the San Joaquin River at Vernalis during the Pulse Flow Period that would exist absent (1) the VAMP, (2) flows provided by Reclamation from New Melones pursuant to the requirements of the 2009 National Marine Fisheries Service’s Final Biological Opinion for the Operations, Criteria and Plan Regarding Effects of Continued Long Term Operations of the Central Valley Project and State Water Project, or (3) water acquisitions, including but not limited to the following:”

For 2010 only, San Joaquin River Restoration Flows will be ‘existing flow’.

6. In recognition of the OCAP-Biological Opinion Paragraph 5.4, is supplemented to include the following language:

“The operation of New Melones Reservoir for the period of June 1, 2009 through the date of final determination of the SJRGA’s VAMP contribution for 2010 will be post-assessed to estimate end of month reservoir storage as though it had been operated absent the National Marine Fishery Service’s (NMFS) Reasonable and Prudent Alternatives (RPAs). This post-assessed storage condition will then be used to estimate an adjusted NMI for a projection of New Melones Reservoir operations for the VAMP period, as though the 1997 IPO is in place. The projected non-VAMP operation of the tributaries combined with the projected 1997 IPO operation of New Melones Reservoir will be used to determine the Existing Flow for the VAMP period; that will be used to determine the VAMP Target Flow. And then that will determine the SJRGA supplemental water volume. The volume of SJRGA supplemental water will not be changed for the duration of VAMP operations.”

Reclamation is responsible for preparing for acceptance by the SJRGA the post-assessment and projection of New Melones Reservoir storage and operations under the 1997 IPO. The first post-assessment will be prepared and submitted by the 15th of the month following the execution of this agreement and subsequently by the 15th of the month following months until the date of final determination of the SJRGA’s VAMP contribution. The operator contact for the SJRGA will be Mr. Mike Archer and the operator contact for the USBR will be Mr. Paul Fujitani.”

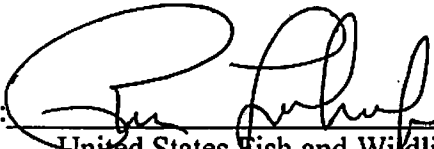
7. In recognition of the OCAP Biological Opinion Paragraphs 5.5, and 5.6, are supplemented to include the following language:

“The SJRGA will be responsible for meeting its share of the VAMP Target Flows during the 31 day Tributary operations first and foremost, regardless of the CVP contribution from New Melones under the OCAP Biological Opinion RPAs. The Parties also recognize the RPA contributions may cause actual flows at Vernalis to exceed VAMP Target Flows during the 31-day period.”

8. The Parties agree to abide by all the terms and conditions of the March 1, 1999 SJRA, as modified herein, through December 31, 2010, unless the San Joaquin River Agreement is terminated earlier pursuant to Section 13, or otherwise extended.

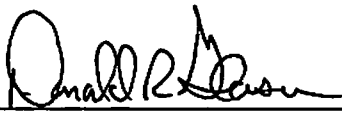
IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the latest day and the year listed hereafter, or January 1, 2010, whichever is earlier.

Dated: December 29, 2009

By: 
United States Fish and Wildlife Service

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the latest day and the year listed hereafter, or January 1, 2010, whichever is earlier.

Dated: 2/10/10

By: 
United States Bureau of Reclamation

**SECOND AMENDMENT TO THE SAN JOAQUIN RIVER AGREEMENT TO
EXTEND TERM OF AGREEMENT**

WHEREAS, on March 1, 1999, the San Joaquin River Group Authority and its member agencies (Modesto Irrigation District, Turlock Irrigation District, Merced Irrigation District, South San Joaquin Irrigation District, the Oakdale Irrigation District, the San Joaquin River Exchange Contractors Water Authority, and its member agencies, Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District and Columbia Canal Company), the Friant Water Authority, the City and County of San Francisco (hereinafter referred to collectively as “the SJRGA”), the United States Bureau of Reclamation and the United States Fish and Wildlife Service (hereinafter referred to collectively as “DOP”), the California Department of Water Resources and the California Department of Fish and Game (hereinafter referred to collectively as “the State”), the State Water Contractors (“SWC”), Kern County Water Agency, Tulare Lake Basin Water Storage District, Santa Clara Valley Water District, San Luis-Delta Mendota Water Authority (“SLDMWA”), Westlands Water District, Metropolitan Water District of Southern California, and the Natural Heritage Institute (collectively referred to as “the Parties”) entered into an agreement known as “The San Joaquin River Agreement (SJRA);” and

WHEREAS, the SJRA expired by its own terms on December 31, 2009; and

WHEREAS, the “Amendment to the San Joaquin River Agreement to Extend Term of Agreement” which was executed on January 1, 2010, extended the SJRA until December 31, 2010;

WHEREAS, the environmental analysis prepared for the SJRA (Meeting Flow Objectives for the San Joaquin River Agreement, 1999-2010) expires on December 31, 2010; and

WHEREAS, Paragraph 22.0 of the SJRA requires that any modification thereto be made in writing and signed by the parties against whom enforcement of such modification is sought.

NOW, THEREFORE, the SJRGA, DOI, State, SWC, SLDMWA and the other Parties hereby agree to modify the San Joaquin River Agreement as follows:

1. Paragraph 4.0 of the March 1, 1999, SJRA is modified to read: “This Agreement shall terminate on December 31, 2011, unless extended pursuant to Paragraph 5.1 or Paragraph 22, or terminated earlier pursuant to Section 13.”
2. Paragraph 5.3 of the SJRGA is modified as follows: (a) at the end of the first sentence, add: “Such a year shall be referenced as an “Off Ramp Year.”; (b) change the second sentence to read “The USBR has continuing obligations to meet San Joaquin River flows pursuant to the applicable Biological Opinions.”

3. Payment for 2011 will be made in accordance with Paragraph 6.1 of the SJRA.
4. Paragraph 6.3 is modified to add the language at the end of that section: "In the event that 2011 is an Off Ramp Year, as defined, payment for that year shall be made to the SJRGA".
5. Paragraph 3.2 is modified to read as follows:

"Existing Flow" – the forecasted flows in the San Joaquin River at Vernalis during the Pulse Flow Period that would exist absent (1) the VAMP, (2) flows provided by Reclamation from New Melones pursuant to the requirements of the 2009 National Marine Fisheries Service's Final Biological Opinion for the Operations, Criteria and Plan Regarding Effects of Continued Long Term Operations of the Central Valley Project and State Water Project, or (3) water acquisitions, including but not limited to the following:"

For 2011 only, San Joaquin River Restoration Flows will be considered neither part of the 'existing flow' nor part of the compliance flow.

6. In recognition of the OCAP-Biological Opinion Paragraph 5.4 is supplemented to include the following language:

"The operation of New Melones Reservoir for the period of June 1, 2009 through the date of final determination of the SJRGA's VAMP contribution for 2011 will be post-assessed to estimate end of month reservoir storage as though it had been operated absent the National Marine Fishery Service's (NMFS) Reasonable and Prudent Alternatives (RPAs). This post-assessed storage condition will then be used to estimate an adjusted NMI for a projection of New Melones Reservoir operations for the VAMP period, as though the 1997 IPO is in place. The projected non-VAMP operation of the tributaries combined with the projected 1997 IPO operation of New Melones Reservoir will be used to determine the Existing Flow for the VAMP period; that will be used to determine the VAMP Target Flow. And then that will determine the SJRGA supplemental water volume. The volume of SJRGA supplemental water will not be changed for the duration of VAMP operations."

Reclamation is responsible for preparing for acceptance by the SJRGA the post-assessment and projection of New Melones Reservoir storage and operations under the 1997 IPO. The first post-assessment will be prepared and submitted by the 15th of the month following the execution of this agreement and subsequently by the 15th of the month following months until the date of final determination of the SJRGA's VAMP contribution. The operator contact for the SJRGA will be Mike Archer and the operator contact for the USBR will be Paul Fujitani".

7. In recognition of the OCAP Biological Opinion Paragraphs 5.5 and 5.6 are supplemented to include the following language:

"The SJRGA will be responsible for meeting its share of the VAMP Target Flows during the 31 day Tributary operations first and foremost, regardless of the CVP contribution from New Melones under the OCAP Biological Opinion RPAs. The Parties also recognize the RPA contributions may cause actual flows at Vernalis to exceed VAMP Target Flows during the 31-day period."

8. The Parties agree to abide by all the terms and conditions of the March 1, 1999 SJRA, as modified herein, through December 31, 2011, unless the San Joaquin River Agreement is terminated earlier pursuant to Section 13 or otherwise extended.

9. Prior to December 31, 2011, the Parties may consider another extension to the SJRA. If the parties agree to further extensions of the SJRA, the Parties agree to negotiate in good faith any additional modifications or changes to the terms and conditions hereof, as well as to seek any and all necessary permits, approvals, authorities, and to complete all necessary documents, analyses and studies, including environmental studies, necessary to continue the performance of the SJRA.

10. This Second Amendment shall be in effect only if adequate NEPA coverage is in place that covers this Amendment.

11. This Second Amendment and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the latest day and the year listed hereafter, or January 1, 2011, whichever is earlier.

Dated: 11-22-10

By: 
San Joaquin River Group Authority

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the latest day and the year listed hereafter, or January 1,2011, whichever is earlier.

Dated: 12/30/10

By: *D. R. Arroyo*
United States Bureau of Reclamation

AGREEMENT BY AND BETWEEN
OAKDALE IRRIGATION DISTRICT, SOUTH SAN JOAQUIN IRRIGATION
DISTRICT, CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE
SAN LUIS & DELTA MENDOTA WATER AUTHORITY FOR RELEASE OF
WATER TO AUGMENT FLOWS TO BENEFIT MIGRATORY FISH IN THE
STANISLAUS AND SAN JOAQUIN RIVERS

This Agreement is entered into this ____ day of April, 2013, between and among the Oakdale Irrigation District (“OID”), the South San Joaquin Irrigation District (“SSJID”), collectively referred to as “Districts,” the California Department of Water Resources (“DWR”), and the San Luis & Delta Mendota Water Authority (“Water Authority”). OID, SSJID, DWR and Water Authority may also be referred to individually by name as “Party,” or collectively as “Parties.”

RECITALS

WHEREAS, Districts are California irrigation districts operating under and by virtue of Division 11 of the California Water Code, and

WHEREAS, Districts are co-owners of certain water rights on the Stanislaus River, including pre-1914 appropriative rights to divert water from the Stanislaus River for irrigation of the lands within the Districts, and various post-1914 appropriative rights to store Stanislaus River water in various reservoirs for diversion to irrigate lands within the Districts, as well as to generate electrical power; and

WHEREAS, Water Authority is a California joint power authority operating under and by virtue of Section 6500, et seq., of the California Government Code; and

WHEREAS, Water Authority’s member units are 29 water agencies representing approximately 2,100,000 acres of land within the western San Joaquin Valley, San Benito and Santa Clara Counties that receive water from the federal Central Valley Project (“CVP”) under water service or exchange contracts; and

WHEREAS, DWR owns, operates and maintains water collection, storage, conveyance and delivery facilities, including but not limited to the State Water Project (“SWP”), and delivers water to its water service contractors located throughout California; and

WHEREAS, the 2013 water year type for the San Joaquin Valley is classified as “Critically Dry” using the San Joaquin River Index 60-20-20 water year hydrologic classification index; and

WHEREAS, the National Marine Fisheries Service’s (“NMFS”) 2009 biological opinion (“BO”) Reasonable and Prudent Alternative (RPA) Action IV.2.1 establishes maximum combined CVP/SWP export levels between April 1 and May 31 for the

purpose of protecting migratory fish in the lower San Joaquin River and Delta, particularly fall-run Chinook salmon and Central Valley steelhead (BO, p. 641-645); and

WHEREAS, in water year types classified as “Critically Dry” using the San Joaquin River Index 60-20-20, , pursuant to Phase II of the BO RPA IV.2.1, DWR and Reclamation must conduct export operations so that the “Vernalis flow (cfs): CVP/SWP combined exports” ratio is not less than 1:1. This ratio is subject to the exception procedure for Health and Safety where the agencies have estimated that a combined CVP/SWP export rate of 1500 cfs is needed to meet health and safety needs. (BO, p. 643-644); and

WHEREAS, Districts’ water rights are satisfied by and through the performance of a settlement agreement with the USBR (the “1988 Agreement”) which requires the USBR to deliver water to the Districts at Goodwin Dam each year; and

WHEREAS, the amount of water available for the Districts’ use each year under the 1988 Agreement is calculated by adding the inflow into New Melones to the amount derived by the formula (600,000-inflow) divided by three (3), not to exceed 600,000 acre-feet; and

WHEREAS, for purposes of determining the amount to be made available to the Districts in accordance with the 1988 Agreement, the USBR provides initial forecasts to the Districts in February and March, and a final forecast in April; and

WHEREAS, the initial forecast provided by the USBR for the Districts indicates that the Districts shall be entitled to receive their full allotment of 600,000 acre-feet in 2013; and

WHEREAS, based upon the USBR’s initial forecast, Districts are willing to release a portion of their water between April 5 and May 29, 2013. Reclamation on behalf of the Districts will release such water from Goodwin Dam over, above and in excess of the quantities released by the USBR necessary to satisfy the USBR’s obligations under Appendix 2-E and RPA Action IV.2.1 of the BO; and

WHEREAS, the Parties hereto expect and anticipate, but cannot guarantee, the amount of water released pursuant to this Agreement will subsequently arrive at Vernalis; and

WHEREAS, the Districts’ release of supplemental flow in April and May will improve instream flow conditions for migratory fish in the Stanislaus and San Joaquin River and will have an incidental effect of improving water quality and water supply conditions in the Delta that can benefit CVP and SWP operations; and.

WHEREAS, DWR and the Water Authority are each willing to fund 50% of the supplemental releases and to share on a 50-50 basis the anticipated incidental water supply benefits to their respective water contractors.

NOW, THEREFORE, the Districts, DWR and Water Authority, on the terms and conditions herein set forth, agree as follows:

AGREEMENT

1. **TERM**: This Agreement shall expire on December 1, 2013, unless terminated sooner by written agreement of the Parties.

2. **AGREEMENT TO RELEASE WATER**: The Districts will request USBR to release the Districts' water from Goodwin Dam between April 5 and May 29 of 2013 for the purpose of improving flow conditions in the Stanislaus and San Joaquin River to benefit migratory fish.

3. **QUANTITY**:

a) Based upon the initial forecast issued by the USBR pursuant to the 1988 Agreement, Districts agree to the release of up to 80,000 acre-feet.

b) In the event that the USBR's April forecast required by the 1988 Agreement indicates that the Districts shall be entitled to less than their full allotment of 600,000 acre-feet, then the Parties shall immediately meet and confer to determine if the quantity of water that shall be released at Goodwin Dam shall be decreased and, if so, by how much.

c) The quantity of water released will be measured as described in Section 8 below.

4. **PURCHASE PRICE**: DWR and Water Authority agree to pay the Districts \$100 per acre-foot for water measured in accordance with Section 8 below.

5. **PAYMENT**:

a) On or before June 30, 2013, the Districts shall invoice the Water Authority and DWR for the quantity of water as measured at Vernalis in accordance with section 8 below. DWR and Water Authority shall each be billed 50% of this quantity of water at the price identified in Section 4 above.

b) Water Authority shall pay within sixty (60) days of receipt of the invoice.

c) The Districts shall submit two copies of each invoice to DWR Accounting Office, Contracts Payable Unit, P.O. Box 942836, Sacramento, California, 94236-0001. Undisputed invoices shall be paid by DWR within 45 days of the date received by the Accounting Office, pursuant to the Prompt Payment Act as specified in Government Code, Chapter 4.5 (commencing with Section 927).

6. **INTEREST**: Water Authority shall pay the Districts interest at the annual interest rate of 10% on any charges that remain unpaid sixty (60) days beyond the due date. DWR shall pay the Districts late payment penalties in accordance with the Prompt Payment Act.

7. **WATER QUALITY**: The Districts make no warranty or representations as to the quality or fitness for use of any water released under this Agreement.

8. **WATER MEASUREMENT**: The quantity of water released shall be measured at Goodwin Dam, on a daily basis by USBR, and confirmed by USBR, DWR, and Districts as measured at Vernalis.

9. **MODIFICATION OF RELEASE**: To the extent practicable, USBR and Districts will release water on a schedule developed in coordination with DWR. Districts, Water Authority, and DWR shall work together in good faith on any proposed modification on twenty-four (24) hours' notice.

10. **ENVIRONMENTAL REVIEW**: The Parties shall cooperate regarding the preparation of any and all documents the Parties determine necessary to comply with California Environmental Quality Act (CEQA), the National Environmental Policy Act ("NEPA"), or any other provision of applicable state or federal law.

11. **TERMINATION**:

a) Any Party to this Agreement shall have the right to terminate this Agreement, for any reason, upon twenty-four (24) hours' notice.

b) In the event of termination under this paragraph, the Parties shall thereafter be under no further obligation or responsibility hereunder, and will release each other party from further obligations under this Agreement, except for their respective shares of costs incurred prior to the effective date of termination.

12. **LITIGATION COSTS**: The Parties shall each defend their own interests, and bear their own costs in litigation or regulatory action involving this Agreement. All Parties agree to reasonably cooperate with each other in the defense of any litigation that may be filed as a result of this Agreement.

13. **COOPERATION**: To the extent reasonably required, each Party to this Agreement shall, in good faith, assist the other in obtaining all such necessary approvals and preparation of required environmental documents. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.

14. **WAIVER OR RIGHTS**: Any waiver, at any time, by any Party of its rights with respect to a breach or default, or any other matter arising in connection with this

Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

15. **ASSIGNMENT:** Any attempted assignment of this Agreement in whole or in part without the prior written consent of all Parties hereto is void.

16. **NOTICES:** All notices that are required, either expressly or by implication, to be given by any Party to the other under this Agreement shall be signed for by OID, SSJID, DWR and Water Authority by such officers as they may, from time to time, authorize in writing to so act.

Any notices to Parties required by this Agreement shall be delivered or mailed, United States first-class postage prepaid, addressed as follows:

OAKDALE IRRIGATION DISTRICT

General Manager/Secretary
Oakdale Irrigation District
1205 East "F" Street
Oakdale, CA 95361

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

General Manager/Secretary
South San Joaquin Irrigation District
11011 East Highway 120
Manteca, CA 95336

SAN LUIS & DELTA MENDOTA WATER AUTHORITY

Daniel Nelson, Executive Director
San Luis & Delta Mendota Water Authority
P.O. Box 2157
Los Banos, CA 93635

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Rob Cooke, Chief, State Water Project Analysis Office
Department of Water Resources
P.O. Box 924836, Room 1115-1
Sacramento, CA 94236-0001

Notice shall be deemed given (a) two calendar days following mailing via regular or certified mail, return receipt requested, (b) one business day after deposit with any one-day delivery service assuring "next day" delivery, (c) upon actual receipt of notice, or (d) upon transmission, if by facsimile, whichever is earlier. The Parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

17. **APPROVALS**: Where the terms of this Agreement provide for action to be based upon a judgment, approval, review or determination of any Party, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

18. **ARBITRATION**: In the event of a dispute between the Parties as to any right, alleged right, obligation or alleged obligation under this Agreement, the Parties shall make a good faith effort to resolve the dispute. In the event that a resolution of the dispute cannot be reached despite these efforts, any Party may declare an impasse and its intent to submit the matter to arbitration. Any such arbitration shall be held and conducted before one arbitrator who shall be selected by mutual agreement of the Parties. If agreement is not reached on the selection of an arbitrator within fifteen (15) days after a Party has notified the other Parties of its election to submit to arbitration, then such arbitrator shall be appointed by the presiding judge of the superior court of Stanislaus County upon application of either Party hereto. The award or decision of the arbitrator shall be final and judgment may be entered thereon. The provisions of Title 9 of Part 3 of the California Code of Civil Procedure, including Section 1283.05, and successor statutes, permitting expanded discovery proceedings shall be applicable to all disputes which are arbitrated pursuant to this paragraph.

19. **OTHER AGREEMENTS**: Nothing contained herein restricts the Districts from releasing water, or providing water services and sales to others as authorized by law, provided such releases, services or sales do not unreasonably interfere with Districts' obligation hereunder.

20. **ENTIRE AGREEMENT**: This Agreement constitutes the entire Agreement between the Districts, Water Authority and DWR and supersedes any oral agreement, statement or promise between them relating to the subject matter of the Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by all Parties to be effective.

21. **EFFECTIVE DATE**: The effective day and date of this Agreement shall be the day and date first above written.

22. **COUNTERPARTS**: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

23. **GENERAL INTERPRETATION**: The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring

construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party

24. **AGREEMENT NOT A PRECEDENT**: This Agreement is unique because of the critically dry year conditions and export rate constraints under the BO and should not be considered to set a precedent for future agreements.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Daniel G. Nelson, Executive Director

OAKDALE IRRIGATION DISTRICT

By:  _____
Steve Knell, General Manager

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: _____
Jeff Shields, General Manager

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Mark W. Cowin, Director

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.


SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Daniel G. Nelson, Executive Director

OAKDALE IRRIGATION DISTRICT

By: _____
Steve Knell, General Manager

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By:  _____
Jeff Shields, General Manager

CALIFORNIA DEPARTMENT OF WATER RESOURCES

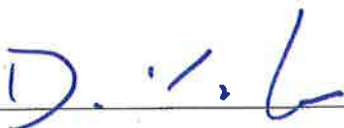
By: _____
Mark W. Cowin, Director

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: 
Daniel G. Nelson, Executive Director

OAKDALE IRRIGATION DISTRICT

By: _____
Steve Knell, General Manager

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: _____
Jeff Shields, General Manager

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Mark W. Cowin, Director

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24. **AGREEMENT NOT A PRECEDENT:** This Agreement is unique because of the critically dry year conditions and export rate constraints under the BO and should not be considered to set a precedent for future agreements.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Daniel G. Nelson, Executive Director

OAKDALE IRRIGATION DISTRICT

By: _____
Steve Knell, General Manager

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: _____
Jeff Shields, General Manager

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: Dale K. Hoffman
for Mark W. Cowin, Director

AGREEMENT TO PURCHASE RELEASE OF WATER BY AND AMONG THE
OAKDALE IRRIGATION DISTRICT, THE SOUTH SAN JOAQUIN
IRRIGATION DISTRICT, THE SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY, AND THE CALIFORNIA DEPARTMENT OF WATER
RESOURCES
SWPAO #15-022

This Agreement is entered into this 29th day of September, 2015, by and among the Oakdale Irrigation District (OID), the South San Joaquin Irrigation District (SSJID), (collectively the Districts), the San Luis & Delta-Mendota Water Authority (SLDMWA), and the Department of Water Resources (DWR) of the State of California.

RECITALS

WHEREAS, Districts are California irrigation districts operating under and by virtue of Division 11 of the California Water Code; and

WHEREAS, DWR owns, operates and maintains water collection, storage, conveyance and delivery facilities, including but not limited to the State Water Project (SWP), and delivers water to 29 water service contractors located throughout California; and

WHEREAS, the SLDMWA is a California joint powers authority operating under and by virtue of Section 6500, et seq., of the California Government Code; and

WHEREAS, the SLDMWA is comprised of 28 member agencies representing approximately 2,100,000 acres of land within the western San Joaquin Valley, San Benito and Santa Clara Counties; and

WHEREAS, 26 of the SLDMWA's 28 member agencies receive water from the federal Central Valley Project ("CVP") under water service or exchange contracts; and

WHEREAS, Districts are co-owners of certain water rights on the Stanislaus River, including pre-1914 appropriative rights to divert water from the Stanislaus River, and various post-1914 appropriative rights to store Stanislaus River in various reservoirs; and

WHEREAS, the past three years of below normal hydrology resulted in critical drought conditions and the Governor issuing a drought declaration for 2014 and 2015; and

NOW, THEREFORE, the Districts, SLDMWA, and DWR, on the terms and conditions herein set forth, agree as follows:

AGREEMENT

1. **DEFINITIONS:** The following definitions shall govern this Agreement:
 - (a) "Parties" means the Districts, SLDMWA, and DWR.
 - (b) "Delivery" means Districts' water made available to U.S. Bureau of Reclamation (USBR) at New Melones Reservoir in September 2015 to be released at Goodwin Dam on the schedule developed pursuant to Paragraph 12 of this Agreement. This definition is intended to include the grammatical variations of the term "delivery" including "deliver" and "delivered," where such term references water.

2. **TERM:** This Agreement shall become effective upon execution by all parties, and shall terminate on December 31, 2015 or upon final payment by SLDMWA and DWR of all costs attributable to this Agreement, whichever occurs later.

3. **WATER AVAILABLE FOR PURCHASE:** Pursuant to this Agreement:
 - (a) The Districts will make the Water available to USBR in September 2015 in an amount up to 23,000 acre-feet , and
 - (b) The water for which there has been a Delivery will be released by USBR in accordance with the requirements set forth in Paragraph 12. Benefits of water released will be made available to USBR and DWR and will be shared equally 50/50 pursuant to a separate operations agreement between DWR and USBR.

4. **COMPLIANCE WITH APPLICABLE LAWS AND OBTAINING APPROVALS:**
 - (a) The Districts shall comply with all applicable laws and regulations including but not limited to the California Environmental Quality Act (CEQA), California Endangered Species Act (CESA), the Federal Endangered Species Act (FESA) and shall secure any required consents, permits, reports, and orders and shall provide DWR with copies of the same prior to providing the Delivery under this Agreement.
 - (b) Districts have determined the Project is categorically exempt from the CEQA because it will result in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations Section 15301(i) and in the ongoing operation of the existing system without change in operation or expansion of use pursuant to 14 California Code of Regulations, section 15301 (Class 1).
 - (c) Districts shall be responsible for obtaining any necessary approval from any relevant government entities for providing the Delivery. The Districts shall

email to DWR any submissions related to this Agreement that the Districts make to any government entity.

- (d) DWR will file a Notice of Exemption based on CEQA Guidelines Section 15301 (Existing Facilities) upon execution of this Agreement with the State Clearinghouse.
- (e) SLDMWA has determined the Project is categorically exempt from CEQA because it will result in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations Section 15301(i) and in the ongoing operation of the existing system without change in operation or expansion of use pursuant to 14 California Code of Regulations, section 15301 (Class 1).
- (f) If a Party is required to pay a fine or civil penalty for any of its actions related to this Agreement, then that Party alone shall be responsible for paying the fine or penalty.

5. **PURCHASE PRICE:** SLDMWA and DWR agree to pay five hundred dollars (\$500) per acre foot of water Delivered.

6. **WATER QUALITY:** The Districts make no warranty or representations as to the quality or fitness for the Delivery.

7. **WATER MEASUREMENT AND DELIVERY:** DWR and SLDMWA are paying Districts to provide up to 23,000 acre-feet to USBR in New Melones Reservoir. The payment shall be based on the actual flows released by USBR from Goodwin Dam in accordance with the October "pulse flow" identified in the Stanislaus River Minimum Fish Flow Schedule for critically dry year types per Appendix 2-E of the June 2009 National Marine Fishery Service (NMFS) Biological Opinion on the long-term operations of the Central Valley Project and State Water Project. For the purposes of this agreement the "pulse flow" volume will be measured as the Goodwin release exceeding a base flow of 200 cfs. Through concurrence with NMFS the timing of the pulse flow period may be shifted to overlap into early November. Delivery released from Goodwin Dam shall be measured on a daily basis by USBR at the Goodwin Gauge and confirmed by USBR and DWR. The Districts and SLDMWA acknowledge that USBR shall be responsible for determining the flow and schedule of the Delivery and DWR shall be responsible for verifying the flow and schedule of the Delivery.

8. **PAYMENT:**

- (a) Districts shall invoice SLDMWA and DWR each 50% of the Delivery up to a total of 23,000 af provided at the price identified in Paragraph 5 above after USBR and DWR have confirmed the amount of water released by USBR from Goodwin Dam in accordance with Paragraph 7.
- (b) SLDMWA shall pay within 60 days of receipt of the invoice.

- (c) Districts shall submit a copy of each invoice to (1) DWR contact listed in Paragraph 20 Notices; and (2) DWR Accounting Office, Contracts Payable Unit, P.O. Box 942836, Sacramento, California, 94236-0001. DWR shall pay undisputed invoices within 45 days of the date received by the Accounting Office, pursuant to the Prompt Payment Act as specified in Government Code, Chapter 4.5 (commencing with Section 927).

9. **INTEREST:** SLDMWA shall pay the Districts interest at the annual interest rate of ten percent on any charges that remain unpaid 60 days beyond the due date. DWR shall pay the Districts late payment penalties in accordance with the Prompt Payment Act.

10. **DISTRICTS LIMITING CONDITIONS:**

- (a) The Districts' obligations to make available the quantity of water specified in Paragraph 3 of this Agreement will, at all times, be subject and subordinate to the following conditions:
 - 1) the terms and conditions of their water rights as they currently exist;
 - 2) the 1988 Agreement and Stipulation with Reclamation (the "1988 Agreement");
 - 3) the Tulloch Enhancement Agreement with PG&E, as it now exists and as modified from time to time;
 - 4) the Goodwin Agreement, as it now exists and as modified from time to time;
 - 5) the terms and conditions of Federal Energy Regulatory Commission licenses, as they now exist, and as they may be amended and/or renewed upon relicensing including, but not limited to, those held for Tulloch and Goodwin Dams;
 - 6) the rights of landowners, within the boundaries of OID or SSJID as of the initial delivery of water purchased pursuant to this Agreement hereunder, to the beneficial use of their respective District's water;
 - 7) applicable federal and state laws now in existence and as modified from time to time, affecting the Districts' rights or obligations, and
 - 8) the rights of the cities of Lathrop, Manteca, Escalon and Tracy pursuant to each city's Water Supply Development Agreement with SSJID.
- (b) The conditions described in 1-8, inclusive, above, are collectively referred to as the District Limiting Conditions. Nothing in this Agreement shall be

construed so as to contradict, conflict with or otherwise be contrary to the provisions of any of the District Limiting Conditions; and in the event of any conflict between any of the District Limiting Conditions and this Agreement, the District Limiting Condition(s) shall control, and Districts shall not be deemed to be in violation of this Agreement by any modifications of the Agreement, including reduced supply for SLDMWA and DWR, required to ensure compliance with any of the District Limiting Conditions.

11. **SLDMWA and DWR LIMITING CONDITIONS:** The obligations of Districts to Deliver water to USBR and of SLDMWA and DWR to pay for Delivery are at all times subject to the approval of this Agreement for Release of Water and subordinate to USBR approval of the use of facilities that it owns. If the Districts do not obtain this approval, this Agreement shall automatically terminate and SLDMWA and DWR shall have no further obligations.

12. **DELIVERY:** Consistent with Paragraph 7, Districts will make Delivery to USBR in September 2015 in the amount and based on a schedule developed by the Districts and USBR. USBR will release the Delivery consistent with that schedule subject to the limitations described in Paragraphs 10 and 11 of this Agreement. No subsequent changes to the schedule, regulatory conditions or other intervening matters, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to the Districts; diversions outside the control of Districts which may hereafter be authorized for others from the North, Middle or South Forks of the Stanislaus River, and any action, legislation, ruling or determination adverse to the Districts affecting the Agreement and beyond the reasonable control of the Districts shall modify the obligations of the Parties with respect to water so delivered.

13. **WATER SUPPLY REDUCTIONS:** The Districts may reduce the Delivery for any of the following reasons: the Limiting Conditions; failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to the Districts; diversions outside the control of Districts which may hereafter be authorized for others from the North, Middle or South Forks of the Stanislaus River, and any action, legislation, ruling or determination adverse to the Districts affecting the Agreement and beyond the reasonable control of the Districts. Districts shall make good faith efforts to avoid such reductions, but SLDMWA and DWR agree that Districts shall not be liable for reductions of supply in this Agreement due to such causes. SLDMWA and DWR shall have no obligation to pay for water not Delivered because of a reduction caused by factors listed in this Paragraph.

14. **APPROVALS AND COSTS:** SLDMWA and DWR are solely responsible for any costs associated with the USBR release of Delivery from New Melones Reservoir. This Paragraph survives termination or expiration of this Agreement.

15. **LITIGATION COSTS:** Districts agree to defend their own interests in any litigation or regulatory action challenging the validity of Districts' water rights. The Parties shall each defend their own interests in litigation or regulatory action involving this Agreement, including environmental compliance and purchase of the Delivery. All Parties agree to reasonably cooperate with each other in the defense of any litigation that may be filed as a result of this Agreement. This Paragraph survives termination or expiration of this Agreement.
16. **EXPENSES:** Districts shall be responsible for all expenses, including but not limited to legal, environmental, engineering consultant's fees, expenses incurred to obtain any and all necessary approvals and to satisfy all environmental requirements, including CEQA and/or NEPA, required to effectuate the Agreement, and to defend against any litigation challenging the Agreement or the approvals, water rights or environmental reviews associated with the Agreement. This Paragraph survives termination or expiration of this Agreement.
17. **COOPERATION:** To the extent reasonably required, each Party to this Agreement shall, in good faith, assist the other in obtaining all such necessary approvals and preparation of required environmental documents. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.
18. **WAIVER OR RIGHTS:** Any waiver, at any time, by any Party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.
19. **ASSIGNMENT:** This Agreement is entered into in reliance on water supplies available to Districts in 2015 and USBR's need for water in 2015 to meet the pulse flow during October and November 2015 provided under the 2009 Biological Opinion issued by the National Marine Fisheries Service for Coordinated Operations of the CVP and SWP OCAP-BO, and therefore any attempted assignment of this Agreement in whole or in part without the prior written consent of all Parties hereto is void.
20. **NOTICES:** All notices that are required, either expressly or by implication, to be given by any Party to the other under this Agreement shall be signed for by Districts and SLDMWA and DWR by such officers as they may, from time, authorize in writing to so act.

Any notices to Parties required by this Agreement shall be hand-delivered or mailed, United States first-class postage prepaid, or electronic mail followed by written notice sent by U.S. mail and addressed as follows:

OAKDALE IRRIGATION DISTRICT

Steve Knell, General Manager/Secretary
Oakdale Irrigation District
1205 East "F" Street
Oakdale, CA 95361
Email: sknell@oakdaleirrigation.com
Phone: (209) 847-0341

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

Jeff Shields, General Manager/Secretary
South San Joaquin Irrigation District
11011 East Highway 120
Manteca, CA 95336
Email: jshields@ssjid.com
Phone: (209) 249-4645

SAN LUIS & DELTA- MENDOTA WATER AUTHORITY

Daniel G. Nelson, Executive Director
P.O. Box 2157
Los Banos, CA 95635
Email: dan.nelson@sldmwa.org
Phone: 209-826-9696

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Robert B. Cooke, Chief
State Water Project Analysis Office
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001
Email: robert.cooke@water.ca.gov
Phone: 916-653-4313

Notice shall be deemed given (a) two (2) calendar days following mailing via regular or certified mail, return receipt requested, (b) one (1) business day after deposit with any one-day delivery service assuring "next day" delivery, (c) upon actual receipt of notice, or (d) upon transmission, if by facsimile, whichever is earlier. The Parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

21. **APPROVALS:** Where the terms of this Agreement provide for action to be based upon a judgment, approval, review or determination of any Party, such terms are

not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

22. **DISPUTE RESOLUTION:** In the event of any dispute regarding interpretation or implementation of this Agreement, the Director of DWR and authorized representatives from the Districts and SLDMWA shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute is unresolved, the Parties shall use the services of a mutually acceptable consultant in an effort to resolve the dispute. Parties involved in the dispute shall share the fees and expenses of the consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

23. **OTHER AGREEMENTS:** Nothing contained herein restricts the Districts from providing water services and sales to others as authorized by law which do not unreasonably interfere with Districts' obligation hereunder.

24. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement between the Districts, SLDMWA and DWR, and supersedes any oral agreement, statement or promise between them relating to the subject matter of the Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by all Parties to be effective.

25. **UNIQUENESS OF AGREEMENT:** This Agreement is unique because of the critically dry year conditions and shall not be considered to set a precedent for future agreements or DWR activities.

26. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

27. **SIGNATURE CLAUSE:**

a. The signatories represent that they have appropriate authorization to enter into this Agreement on behalf of the Party for whom they sign.

b. If required by internal governing rules of OID, SSJID, or SLDMWA, that Party as appropriate, shall deliver to DWR a copy of the Board of Directors resolution and/or other documentation authorizing that Party to enter into this Agreement.

28. **GENERAL INTERPRETATION:** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed

2015 OID/SSJID PURCHASE AGREEMENT
SWPAO #15-022

to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

PARTIES:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: 
Daniel G. Nelson, Executive Director

Date _____

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Carl Torgersen, Deputy Director

Date _____

OAKDALE IRRIGATION DISTRICT

By: _____
Steve R. Knell, General Manager

Date _____

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: _____
Jeff Shields, General Manager

Date _____

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

PARTIES:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Daniel G. Nelson, Executive Director

Date _____

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: Mark E. Anderson
for Carl A. Torgersen, Deputy Director

Date 9/29/15

OAKDALE IRRIGATION DISTRICT

By: _____
Steve R. Knell, General Manager

Date _____

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: _____
Jeff Shields, General Manager

Date _____

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

PARTIES:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Daniel G. Nelson, Executive Director

Date _____

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Carl Torgersen, Deputy Director

Date _____

OAKDALE IRRIGATION DISTRICT

By:  _____
Steve R. Knell, General Manager

Date 9/28/2015

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: _____
Jeff Shields, General Manager

Date _____

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

PARTIES:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Daniel G. Nelson, Executive Director

Date _____

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Carl Torgersen, Deputy Director


Date _____

OAKDALE IRRIGATION DISTRICT

By: _____
Steve R. Knell, General Manager

Date _____

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: 
Jeff Shields, General Manager

Date SEPTEMBER 26, 2015

**AGREEMENT FOR RELEASE OF WATER BY AND AMONG THE
OAKDALE IRRIGATION DISTRICT, THE SOUTH SAN JOAQUIN
IRRIGATION DISTRICT, THE SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY, AND THE CALIFORNIA DEPARTMENT OF WATER
RESOURCES**
SWPAO #16-010

This Agreement is entered into this 8th day of April, 2016, by and among the Oakdale Irrigation District (OID), the South San Joaquin Irrigation District (SSJID), (collectively, the "Districts"), the San Luis & Delta-Mendota Water Authority (SLDMWA), and the Department of Water Resources (DWR) of the State of California.

RECITALS

WHEREAS, Districts are California irrigation districts operating under and by virtue of Division 11 of the California Water Code; and

WHEREAS, DWR owns, operates and maintains water collection, storage, conveyance and delivery facilities, including but not limited to the State Water Project (SWP), and delivers water to 29 water service contractors located throughout California; and

WHEREAS, the SLDMWA is a California joint power authority operating under and by virtue of Section 6500, et seq., of the California Government Code; and

WHEREAS, the SLDMWA is comprised of 28 member agencies representing approximately 2,100,000 acres of land within the western San Joaquin Valley, San Benito and Santa Clara Counties; and

WHEREAS, 26 of the SLDMWA's 28 member agencies receive water from the federal Central Valley Project ("CVP") under water service or exchange contracts; and

WHEREAS, Districts are co-owners of certain water rights on the Stanislaus River, including pre-1914 appropriative rights to divert water from the Stanislaus River, and various post-1914 appropriative rights to store water from the Stanislaus River in various reservoirs; and

WHEREAS, the past four years of below normal hydrology have resulted in critical water shortages in 2016.

NOW, THEREFORE, the Districts, SLDMWA, and DWR, on the terms and conditions herein set forth, agree as follows:

AGREEMENT

1. **DEFINITIONS:** The following definitions shall govern this Agreement:

(a) "Parties" means the Districts, SLDMWA, and DWR.

(b) "Delivery" means Districts' water made available at Goodwin Dam in April and May 2016 to be released at Goodwin Dam on the schedule developed pursuant to Paragraph 13 of this Agreement. This definition is intended to include the grammatical variations of the term "delivery" including "deliver" and "delivered," where such term references water.

2. **TERM:** This Agreement shall become effective upon execution by all parties, and shall terminate on December 31, 2016 or upon final payment by SLDMWA and DWR of all costs attributable to this Agreement, whichever occurs later.

3. **WATER AVAILABLE FOR PURCHASE:** Pursuant to this Agreement:

(a) Upon the request by the United States Bureau of Reclamation ("USBR") and DWR, the Districts agree to make available a Delivery at Goodwin Dam in the April-May time period in the amount up to 75,000 acre-feet of water to assist the USBR in meeting the April-May pulse flow objective under D-1641, provided the Districts receive an allocation from USBR on April 1, 2016 of 600,000 acre-feet. No water shall be released under this Agreement and DWR and SLDMWA shall not be obligated to pay for any flows released unless the release of water, as provided under this Agreement, has been requested by USBR, and the contacts for DWR and SLDMWA listed in Paragraph 22, Notices, have approved both the release and Delivery of this water.

(b) The water made available for Delivery will be released by USBR in accordance with the requirements set forth in Paragraph 13. The benefits of water released will be made available to USBR and DWR and will be shared equally 50/50 pursuant to a separate operations agreement between DWR and USBR. CVP water made available to USBR as a result of the Delivery shall be delivered to the SLDMWA member agencies.

4. **COMPLIANCE WITH APPLICABLE LAWS AND OBTAINING APPROVALS:**

(a) The Districts in making the water available as described in Paragraph 3 shall comply with all applicable laws and regulations, including but not limited to the California Environmental Quality Act (CEQA), California Endangered Species Act (CESA) and the Federal Endangered Species Act (FESA), to secure any required consents, permits, reports, and orders, and shall provide DWR with copies of the same prior to providing the Delivery under this Agreement.

(b) The Districts and SLDMWA are entering into this Agreement based on the determination of Districts and of SLDMWA, as described below, that the Delivery is categorically exempt from the California Environmental Quality Act because it will result

in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations Section 15301(i) and in the ongoing operation of the existing system without change in operation or expansion of use pursuant to 14 California Code of Regulations, section 15301 (Class 1).

(c) Districts shall be responsible for obtaining any approval from any relevant government entities that Districts determine in their discretion is necessary for providing the Delivery. The Districts shall email to DWR any submissions related to this Agreement that the Districts make with any government entity.

(d) SLDMWA has determined the Delivery is categorically exempt from the California Environmental Quality Act because it will result in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations Section 15301(i) and in the ongoing operation of the existing system without change in operation or expansion of use pursuant to 14 California Code of Regulations, section 15301 (Class 1).

(e) Upon execution by all Parties of this Agreement, DWR will file a Notice of Exemption based on CEQA Guidelines Section 15301 (Existing Facilities) with the State Clearinghouse.

(f) If any of the Parties is required to pay a fine or civil penalty for any of its actions related to this Agreement, then that Party alone shall be responsible for paying the fine or penalty.

5. **PURCHASE PRICE**: SLDMWA and DWR agree to pay to the Districts three hundred dollars (\$300) per acre foot for up to 65,000 acre-feet of water delivered. For all amounts made available by the Districts beyond 65,000 acre-feet up to 75,000 acre-feet of water delivered, SLDMWA and DWR agree to pay the Districts \$400 per acre-foot.

6. **WATER QUALITY**: The Districts make no warranty or representations as to the quality or fitness for use of the Delivery.

7. **WATER MEASUREMENT AND DELIVERY**: DWR and SLDMWA shall pay the Districts to provide up to 75,000 acre-feet to USBR in New Melones Reservoir. The payment shall be based on the actual flows released by USBR from Goodwin Dam in excess of the flow necessary to meet the April-May "pulse flow" per Appendix 2-E of the June 2009 National Marine Fishery Service Biological Opinion on the long-term operations of the Central Valley Project and the State Water Project. For the purposes of this Agreement the "pulse flow" volume for which Districts will be paid in accordance with Paragraph 5 will be measured as the Goodwin release exceeding the base flow called for in Appendix 2-E. Through concurrence with NMFS, the timing of the pulse flow period may be shifted. Delivery released from Goodwin Dam shall be measured on a daily basis by USBR at the Goodwin Gauge and confirmed by USBR and DWR. The Districts and SLDMWA acknowledge that USBR shall be responsible for determining the flow and schedule of the Delivery and that DWR shall be responsible for verifying the flow and schedule of the Delivery.

8. **PAYMENT:**

(a) Districts shall invoice SLDMWA and DWR each 50% of the cost for the Delivery up to a total of 75,000 acre-feet provided at the price identified in Paragraph 5 above after USBR and DWR have confirmed the amount of water released by USBR from Goodwin Dam in accordance with Paragraph 7.

(b) SLDMWA shall pay within 60 days of receipt of the invoice.

(c) Districts shall submit (1) an original of each invoice to DWR contact listed in Paragraph 22, Notices, and (2) a copy of each invoice to DWR Accounting Office, Contracts Payable Unit, P. O. Box 942836, Sacramento, California, 94236-0001. DWR shall pay undisputed invoices within 45 days of the date received by the State Water Project Analysis Office, pursuant to the Prompt Payment Act as specified in Government Code, Chapter 4.5 (commencing with Section 927).

9. **INTEREST:** SLDMWA shall pay the Districts interest at the annual interest rate of ten percent on any charges that remain unpaid 60 days beyond the due date. DWR shall pay the Districts late payment penalties in accordance with the Prompt Payment Act.

10. **DISTRICT LIMITING CONDITIONS:** The Districts' obligations to make available the quantity of water specified in Paragraph 3 of this Agreement will, at all times, be subject and subordinate to the following conditions:

(a) The terms and conditions of their water rights as they currently exist;

(b) The 1988 Agreement and Stipulation with USBR (the "1988 Agreement");

(c) The Tulloch Enhancement Agreement with PG&E, as it now exists and as modified from time to time;

(d) The Goodwin Agreement, as it now exists and as modified from time to time;

(e) The terms and conditions of Federal Energy Regulatory Commission licenses, as they now exist, and as they may be amended and/or renewed upon relicensing including, but not limited to, those held for Tulloch and Goodwin Dams;

(f) The rights of landowners, within the boundaries of OID or SSJID as of the delivery of water purchased pursuant to this Agreement hereunder, to the beneficial use of their respective District's water;

(g) Applicable federal and state laws now in existence and as modified from time to time, affecting the Districts' rights or obligations, and

(h) The rights of the cities of Lathrop, Manteca, Escalon and Tracy pursuant to each city's Water Supply Development Agreement with SSJID.

The conditions described in (a)-(h), inclusive, above, are collectively referred to as the District Limiting Conditions. Nothing in this Agreement shall be construed so as to contradict, conflict with or otherwise be contrary to the provisions of any of the District Limiting Conditions; and in the event of any conflict between any of the District Limiting Conditions and this Agreement, the District Limiting Condition(s) shall control, and Districts shall not be deemed to be in violation of this Agreement by any modifications of the Agreement, including reduced supply for SLDMWA and DWR, required to ensure compliance with any of the District Limiting Conditions.

11. **USBR LIMITING CONDITIONS:** The obligations of Districts to Deliver water to USBR and of SLDMWA and DWR to pay for Delivery are at all times subject to the USBR's approval of this Agreement and for the use of USBR's facilities as may be necessary for the Districts to make the Delivery. If the Districts do not obtain this approval, this Agreement shall automatically terminate and SLDMWA and DWR shall have no further obligations.

12. **SLDMWA and DWR LIMITING CONDITIONS:** The obligations of SLDMWA and DWR to pay for Delivery is subject to DWR and USBR operating at a time when Action IV.2.1 (San Joaquin River Inflow to Export Ratio) from the Reasonable and Prudent Alternative in the NMFS Biological Opinion for Continued Operations of the CVP and SWP requires USBR and DWR to implement a Vernalis flow-to-combined CVP and SWP pumping ratio of 1:1 ("1:1 ratio"). If DWR and USBR are unable to pump additional SWP or CVP water made available at Banks Pumping Plant or Jones Pumping Plant as a result of the Delivery, respectively, with or at a 1:1 ratio, the Parties may attempt to reschedule the Delivery within the Pulse Flow Period, or as an alternative, any Party may elect to terminate this Agreement by providing Notice to the other Parties consistent with Paragraph 21. If this Agreement is terminated, SLDMWA and DWR shall only be obligated to pay Districts for the quantity of water Districts released pursuant to Paragraph 7 prior to the Agreement terminating.

13. **DELIVERY:**

(a) Consistent with this Agreement and specifically Paragraph 7, the Districts will make the Delivery available at Goodwin Dam on a schedule developed by the Districts, USBR, DWR, the State Water Board, and National Marine Fisheries Service. The two goals of the Delivery are to assist USBR in meeting the April-May pulse flow and to have additional SWP and CVP water made available at Banks Pumping Plant and Jones Pumping Plant as a result of the Delivery at a time when Action IV.2.1 (San Joaquin River Inflow to Export Ratio) from the Reasonable and Prudent Alternative in the NMFS Biological Opinion for Continued Operations of the CVP and SWP requires USBR and DWR to implement a Vernalis flow-to-combined CVP and SWP pumping ratio of 1:1.

(b) No subsequent changes to the schedule, regulatory conditions or other intervening matters, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to the Districts; diversions outside the control of Districts which may hereafter be authorized for

others from the North, Middle or South Forks of the Stanislaus River, and any action, legislation, ruling or determination adverse to the Districts affecting the Agreement and beyond the reasonable control of the Districts shall modify the obligations of the Parties with respect to water so delivered.

14. **WATER SUPPLY REDUCTIONS**: The Districts may reduce the Delivery for any of the following reasons: the District Limiting Conditions; failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to the Districts; diversions outside the control of Districts which may hereafter be authorized for others from the North, Middle or South Forks of the Stanislaus River, and any action, legislation, ruling or determination adverse to the Districts affecting the Agreement and beyond the reasonable control of the Districts. Districts shall make good faith efforts to avoid such reductions, but SLDMWA and DWR agree that Districts shall not be liable for reductions of supply in this Agreement due to such causes. SLDMWA and DWR shall have no obligation to pay for water not Delivered because of a reduction caused by factors listed in this Paragraph.

15. **APPROVALS AND COSTS**: SLDMWA and DWR are solely responsible for any costs associated with the USBR release of Delivery from New Melones Reservoir. This Paragraph survives termination or expiration of this Agreement.

16. **LITIGATION COSTS**: Districts agree to defend their own interests in any litigation or regulatory action challenging the validity of Districts' water rights. The Parties shall each defend their own interests in litigation or regulatory action involving this Agreement, including environmental compliance and purchase of the Delivery. All Parties agree to reasonably cooperate with each other in the defense of any litigation that may be filed as a result of this Agreement. This Paragraph survives termination of this Agreement.

17. **EXPENSES**: Districts shall be responsible for all expenses, including but not limited to legal, environmental, engineering consultant's fees, expenses incurred to obtain any and all necessary approvals and to satisfy all environmental requirements, including CEQA and/or NEPA, required to effectuate the Agreement, and to defend against any litigation challenging the Agreement or the approvals, water rights or environmental reviews associated with the Agreement. This Paragraph survives termination of this Agreement.

18. **COOPERATION**: To the extent reasonably required, each Party to this Agreement shall, in good faith, assist the other in obtaining all such necessary approvals and preparation of required environmental documents. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.

19. **WAIVER OR RIGHTS**: Any waiver, at any time, by any Party of its rights with respect to a breach or default, or any other matter arising in connection with this

Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

20. **ASSIGNMENT**: No party may assign its rights or obligations under this Agreement, in whole or in part, without prior written consent of all Parties hereto. Any attempted assignment of this Agreement, in whole or in part, without the prior written consent of all Parties hereto is void.

21. **TERMINATION**: Any party may elect to terminate this Agreement upon Notice to the Parties by electronic mail consistent with Paragraph 22. That party providing the termination shall provide the other parties with the specific grounds on which it wishes to terminate the agreement. Termination of this Agreement is effective immediately upon actual electronic mail receipt of Notice by the Parties.

22. **NOTICES**: All notices that are required, either expressly or by implication, to be given by any Party to the other under this Agreement shall be signed for by Districts and SLDMWA and DWR by such officers as they may, from time to time, authorize in writing to so act.

Any notices to Parties required by this Agreement shall be hand-delivered or mailed, United States first-class postage prepaid, or electronic mail followed by written notice sent by U.S. mail and addressed as follows:

OAKDALE IRRIGATION DISTRICT

Steve Knell, General Manager/Secretary
Oakdale Irrigation District
1205 East "F" Street
Oakdale, CA 95361
Email: srknell@oakdaleirrigation.com
Phone: (209) 847-0341

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

Peter Rietkerk, General Manager
South San Joaquin Irrigation District
11011 East Highway 120
Manteca, CA 95336
Email: prietkerk@ssjid.com
Phone: (209) 249-4645

SAN LUIS & DELTA- MENDOTA WATER AUTHORITY

Jason Peltier, Executive Director
P.O. Box 2157
Los Banos, CA 95635
Email: jason.peltier@sldmwa.org
Phone: 209-826-9696

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Chief, State Water Project Analysis Office

c/o Nancy Quan

Department of Water Resources

P.O. Box 942836

Sacramento, CA 94236-0001

Email: nancy.quan@water.ca.gov

Phone: 916-653-0190

Notice shall be deemed given (a) two (2) calendar days following mailing via regular or certified mail, return receipt requested, (b) one (1) business day after deposit with any one-day delivery service assuring "next day" delivery, (c) upon actual receipt of notice, or (d) upon transmission, if by facsimile, whichever is earlier. The Parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

23. **APPROVALS**: Where the terms of this Agreement provide for action to be based upon a judgment, approval, review or determination of any Party, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

24. **DISPUTE RESOLUTION**: In the event of any dispute regarding interpretation or implementation of this Agreement, the Director of DWR and authorized representatives from the Districts and SLDMWA shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute is unresolved, the Parties shall use the services of a mutually acceptable consultant in an effort to resolve the dispute. Parties involved in the dispute shall share the fees and expenses of the consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

25. **OTHER AGREEMENTS**: Nothing contained herein restricts the Districts from providing water services and sales to others as authorized by law which do not unreasonably interfere with Districts' obligation hereunder.

26. **ENTIRE AGREEMENT**: This Agreement constitutes the entire Agreement between the Districts, SLDMWA and DWR, and supersedes any oral agreement, statement or promise between them relating to the subject matter of the Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by all Parties to be effective.

27. **UNIQUENESS OF AGREEMENT**: This Agreement is unique because of the dry year conditions and shall not be considered to set a precedent for future agreements or DWR activities.

28. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

29. **SIGNATURE CLAUSE:**

(a) The signatories represent that they have appropriate authorization to enter into this Agreement on behalf of the Party for whom they sign.

(b) If required by internal governing rules of OID, SSJID, or SLDMWA, that Party as appropriate, shall deliver to DWR a copy of the Board of Directors resolution and/or other documentation authorizing that Party to enter into this Agreement.

30. **GENERAL INTERPRETATION:** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

PARTIES:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: Jason Peltier, Executive Director Frances Mizuno, Assistant Executive Director
Date _____

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Mark E. Andersen, Deputy Director

Date _____

28. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

PARTIES:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Jason Peltier, Executive Director

Date _____

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: Mark E. Andersen
Mark E. Andersen, Deputy Director

Date 4/6/16

OAKDALE IRRIGATION DISTRICT

By: 
Steve R. Knell, General Manager

Date _____

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: _____
Peter Rietkerk, General Manager

Date _____

OAKDALE IRRIGATION DISTRICT

By: _____
Steve R. Knell, General Manager

Date _____

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: *Peter M. Rietkerk*
Peter Rietkerk, General Manager

Date 4/6/2016

**AGREEMENT FOR RELEASE OF WATER BY AND AMONG THE
OAKDALE IRRIGATION DISTRICT, THE SOUTH SAN JOAQUIN
IRRIGATION DISTRICT, THE SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY, AND THE CALIFORNIA DEPARTMENT OF WATER
RESOURCES
SWPAO # 18017**

This Agreement is entered into this 27 day of April, 2018, by and among the Oakdale Irrigation District (OID), the South San Joaquin Irrigation District (SSJID), (collectively, the "Districts"), the San Luis & Delta-Mendota Water Authority (SLDMWA), and the Department of Water Resources (DWR) of the State of California.

RECTALS

WHEREAS, Districts are California irrigation districts operating under and by virtue of Division 11 of the California Water Code; and

WHEREAS, DWR owns, operates and maintains water collection, storage, conveyance and delivery facilities, including but not limited to the State Water Project (SWP), and delivers water to 29 water service contractors located throughout California; and

WHEREAS, the SLDMWA is a California joint power authority operating under and by virtue of Section 6500, et seq., of the California Government Code; and .

WHEREAS, the SLDMWA is comprised of 28 member agencies representing approximately 2,100,000 acres of land within the western San Joaquin Valley, San Benito and Santa Clara Counties; and

WHEREAS, 26 of the SLDMWA's 28 member agencies receive water from the federal Central Valley Project ("CVP") under water service or exchange contracts; and

WHEREAS, Districts are co-owners of certain water rights on the Stanislaus River, including pre-1914 appropriative rights to divert water from the Stanislaus River, and various post-1914 appropriative rights to store water from the Stanislaus River in various reservoirs; and

WHEREAS, DWR's current forecast for the San Joaquin Valley Water Supply Index is below normal with runoff, precipitation, and snowpack below average; and

WHEREAS, the CVP south of the Delta Ag Service Contractors have received a 40% allocation and the State Water Project Contractors ("SWPC") have received a 30% allocation;

NOW, THEREFORE, the Districts, SLDMWA, and DWR, on the terms and conditions herein set forth, agree as follows:

AGREEMENT

1. **DEFINITIONS:** The following definitions shall govern this Agreement:

(a) "Parties" means the Districts, SLDMWA, and DWR.

(b) "Delivery" means Districts' water made available to the United States Bureau of Reclamation ("USBR") at Goodwin Dam in April and May 2018. USBR will then release the water at Goodwin Dam on the schedule developed pursuant to Paragraph 14 of this Agreement. This definition is intended to include the grammatical variations of the term "delivery" including "deliver" and "delivered," where such term references water.

2. **TERM:** This Agreement shall become effective upon execution by all parties and shall terminate on December 31, 2018 or upon final payment by SLDMWA and DWR of all costs attributable to this Agreement, whichever occurs later.

3. **WATER AVAILABLE FOR PURCHASE:** Pursuant to this Agreement:

(a) Upon the request by the USBR and DWR, the Districts agree to make up to 100,000 acre-feet of water available at Goodwin Dam in the April-May time period to assist the USBR in meeting the April-May pulse flows. No water shall be released under this Agreement, and DWR and SLDMWA shall not be obligated to pay for any flows released, unless the release of water, as provided under this Agreement, has been requested by USBR, and the contacts for DWR and SLDMWA listed in Paragraph 23, Notices, have approved both the release and Delivery of this water.

(b) The water made available for Delivery will be released by USBR in accordance with the requirements set forth in Paragraph 14. The water released will be made available to USBR and DWR and will be shared equally 50/50 pursuant to a separate operations agreement between DWR and USBR.

(c) If either USBR or DWR cannot pump its share of the release water, then the other may pump the additional water for the benefit of its contractors provided that it is willing to pay for the additional water and provided the Party pumping the additional water has obtained prior written agreement from the other Party that the pumping will not adversely impact the non-pumping Party's operations.

4. **COMPLIANCE WITH APPLICABLE LAWS AND OBTAINING APPROVALS:**

(a) The Districts in making the water available as described in Paragraph 3 shall comply with all applicable laws and regulations, including but not limited to the California Environmental Quality Act (CEQA), California Endangered Species Act (CESA), and the Federal Endangered Species Act (FESA), shall secure any required consents, permits, reports, and orders, and shall provide DWR with copies of the same

prior to providing the Delivery under this Agreement.

(b) The Districts and SLDMWA are entering into this Agreement based on the determination of Districts and of SLDMWA, as described below, that the Delivery is categorically exempt from the California Environmental Quality Act because it will result in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations Section 15301(i) and in the ongoing operation of the existing system without change in operation or expansion of use pursuant to 14 California Code of Regulations, section 15301 (Class 1).

(c) The Districts shall be responsible for obtaining any approval from any relevant government entities that the Districts determine in their discretion is necessary for providing the Delivery. The Districts shall email to DWR any submissions related to this Agreement that the Districts make with any government entity.

(d) SLDMWA has determined the Delivery is categorically exempt from the California Environmental Quality Act because it will result in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations Section 15301(i) and in the ongoing operation of the existing system without change in operation or expansion of use pursuant to 14 California Code of Regulations, section 15301 (Class 1).

(e) Upon execution by all Parties of this Agreement, DWR will file a Notice of Exemption based on CEQA Guidelines Section 15301 (Existing Facilities) with the State Clearinghouse.

(f) If any of the Parties is required to pay a fine or civil penalty for any of its actions related to this Agreement, then that Party alone shall be responsible for paying the fine or penalty.

5. **PURCHASE PRICE:** SLDMWA and DWR agree to pay to the Districts two hundred dollars (\$200) per acre foot for up to 100,000 acre-feet of water delivered.

6. **WATER QUALITY:** The Districts make no warranty or representations as to the quality or fitness for use of the Delivery.

7. **WATER MEASUREMENT AND DELIVERY:** DWR and SLDMWA shall pay the Districts to provide up to 100,000 acre-feet to USBR in Goodwin Dam. The payment shall be based on the actual flows released by USBR from Goodwin Dam in excess of the flow necessary to meet the April-May "pulse flow" per Appendix 2-E of the June 2009 NMFS Biological Opinion on the long-term operations of the Central Valley Project and the State Water Project. For the purposes of this Agreement the "pulse flow" volume for which Districts will be paid in accordance with Paragraph 5 will be measured as the Goodwin release exceeding the base flow called for in Appendix 2-E. Through concurrence with NMFS, the timing of the pulse flow period may be shifted. Delivery released from Goodwin Dam shall be measured on a daily basis by USBR at the

Goodwin Gauge and confirmed by USBR and DWR. The Districts and SLDMWA acknowledge that USBR shall be responsible for determining the flow and schedule of the Delivery and that DWR shall be responsible for verifying the flow and schedule of the Delivery.

8. WATER INFRASTRUCTURE FOR IMPROVEMENTS TO THE NATION ACT (WIIN ACT): One purpose of this sale is to assist USBR in meeting the 31-day April -May flow objectives in the 2006 SWRCB Water Quality Control Plan for the Bay-Delta. (WIIN Act Section 4001 (b)(7)). This sale will result in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale. (WIIN Act Section 4001 (b)(7)(C).) It is the Parties' expectations that, pursuant to Section 4001b(7), the water made available will be subject to an inflow to export ratio of 1:1 (See Paragraph 13).

9. PAYMENT:

(a) The Districts shall invoice SLDMWA and DWR each 50% of the cost for the Delivery up to a total of 100,000 acre-feet provided at the price identified in Paragraph 5 above after USBR and DWR have confirmed the amount of water released by USBR from Goodwin Dam in accordance with Paragraph 7.

(b) SLDMWA shall pay within 60 days of receipt of the invoice.

(c) The Districts shall submit (1) an original of each invoice to the DWR contact listed in Paragraph 22, Notices, and (2) a copy of each invoice to the DWR Accounting Office, Contracts Payable Unit, P.O. Box 942836, Sacramento, California, 94236-0001. DWR shall pay undisputed invoices within 45 days of the date received by the State Water Project Analysis Office, pursuant to the Prompt Payment Act as specified in Government Code, Chapter 4.5 (commencing with Section 927).

10. INTEREST: SLDMWA shall pay the Districts interest at the annual interest rate of ten percent on any charges that remain unpaid 60 days beyond the due date. DWR shall pay the Districts late payment penalties in accordance with the Prompt Payment Act.

11. DISTRICTS' LIMITING CONDITIONS: The Districts' obligations to make available the quantity of water specified in Paragraph 3 of this Agreement will, at all times, be subject and subordinate to the following conditions:

(a) The terms and conditions of their water rights as they currently exist;

(b) The 1988 Agreement and Stipulation with USBR (the "1988 Agreement");

(c) The Tulloch Enhancement Agreement with PG&E, as it now exists and as modified from time to time;

- (d) The Goodwin Agreement, as it now exists and as modified from time to time;
- (e) The terms and conditions of Federal Energy Regulatory Commission licenses, as they now exist, and as they may be amended and/or renewed upon relicensing including, but not limited to, those held for Tulloch and Goodwin Dams;
- (f) The rights of landowners, within the boundaries of OID or SSJD as of the delivery of water purchased pursuant to this Agreement hereunder, to the beneficial use of their respective District's water;
- (g) Applicable federal and state laws now in existence and as modified from time to time, affecting the Districts' rights or obligations, and
- (h) The rights of the cities of Lathrop, Manteca, Escalon, and Tracy pursuant to each city's Water Supply Development Agreement with SSJD.

The conditions described in (a)-(h), inclusive, above, are collectively referred to as the District Limiting Conditions. Nothing in this Agreement shall be construed so as to contradict, conflict with or otherwise be contrary to the provisions of any of the District Limiting Conditions; and in the event of any conflict between any of the District Limiting Conditions and this Agreement, the District Limiting Condition(s) shall control, and Districts shall not be deemed to be in violation of this Agreement by any modifications of the Agreement, including reduced supply for SLDMWA and DWR, required to ensure compliance with any of the District Limiting Conditions.

12. **USBR LIMITING CONDITION:** The obligations of Districts to Deliver water to USBR at Goodwin Dam, and of SLDMWA and DWR to pay for Delivery are at all times subject to the USBR's concurrence of this Agreement and for the use of USBR's facilities as may be necessary for the Districts to make the Delivery. If the Districts do not obtain this approval, this Agreement shall automatically terminate and SLDMWA and DWR shall have no further obligations. If this Agreement is terminated, SLDMWA and DWR shall only be obligated to pay Districts for the quantity of water Districts released pursuant to Paragraph 7 prior to the Agreement terminating.

13. **SLDMWA and DWR LIMITING CONDITION:** The obligations of SLDMWA and DWR to pay for Delivery is subject to DWR and USBR (1) having capacity at Banks Pumping Plant and/or Jones Pumping Plant to pump the additional SWP or CVP water, and (2) operating at a time when Action IV.2.1 (San Joaquin River Inflow to Export Ratio) from the Reasonable and Prudent Alternative in the NMFS Biological Opinion for Continued Operations of the CVP and SWP requires or, pursuant to section 4001 of the WIIN Act, allows for a Vernalis flow-to-combined CVP and SWP pumping ratio of 1:1 ("1:1 ratio"). If DWR and USBR are unable to pump additional SWP or CVP water made available at Banks Pumping Plant or Jones Pumping Plant, the Parties may attempt to reschedule the Delivery within the Pulse Flow Period, or in the alternative, any Party may elect to terminate this Agreement by providing Notice to the other Parties consistent with Paragraph 22 or the Parties can meet and agree to a new release and diversion rate

for the released water. If this Agreement is terminated, SLDMWA and DWR shall only be obligated to pay Districts for the quantity of water Districts released pursuant to Paragraph 7 prior to the Agreement terminating.

14. DELIVERY:

(a) Consistent with this Agreement and specifically Paragraph 7, the Districts will make the Delivery available at Goodwin Dam on a schedule developed in consultation with the Districts, USBR, DWR, and NMFS. The delivery of the water by the Districts will occur only after USBR, DWR, the Districts and SLDMWA meet and receive assurance from USBR and DWR that the water to be released will be diverted at 1:1. If the water to be released cannot be diverted at 1:1, then pursuant to Paragraph 13, the Parties can reschedule the water or meet and confer to determine what water will be released, diverted and paid for; or terminate this Agreement. The two goals of the Delivery are to assist USBR in meeting the April-May pulse flow and to have additional SWP and CVP water made available at Banks Pumping Plant and Jones Pumping Plant as a result of the Delivery at a time when Action IV.2.1 (San Joaquin River Inflow to Export Ratio) from the Reasonable and Prudent Alternative in the NMFS Biological Opinion for Continued Operations of the CVP and SWP requires USBR and DWR to implement a Vernalis flow-to-combined CVP and SWP pumping ratio of 1:1.

(b) No subsequent changes to the schedule, regulatory conditions or other intervening matters, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to the Districts; diversions outside the control of Districts which may hereafter be authorized for others from the North, Middle or South Forks of the Stanislaus River, and any action, legislation, ruling or determination adverse to the Districts affecting the Agreement and beyond the reasonable control of the Districts shall modify the obligations of the Parties with respect to water so delivered.

15. WATER SUPPLY REDUCTIONS: The Districts may reduce the Delivery for any of the following reasons: the District Limiting Conditions; failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to the Districts; diversions outside the control of Districts which may hereafter be authorized for others from the North, Middle or South Forks of the Stanislaus River, and any action, legislation, ruling or determination adverse to the Districts affecting the Agreement and beyond the reasonable control of the Districts. Districts shall make good faith efforts to avoid such reductions, but SLDMWA and DWR agree that Districts shall not be liable for reductions of supply in this Agreement due to such causes. SLDMWA and DWR shall have no obligation to pay for water not Delivered because of a reduction caused by factors listed in this Paragraph.

16. **APPROVALS AND COSTS:** SLDMWA and DWR are solely responsible for any costs after the USBR release of Delivery from Goodwin Dam. This Paragraph survives termination or expiration of this Agreement.

17. **LITIGATION COSTS:** Districts agree to defend their own interests in any litigation or regulatory action challenging the validity of Districts' water rights. The Parties shall each defend their own interests in litigation or regulatory action involving this Agreement, including environmental compliance and purchase of the Delivery. All Parties agree to reasonably cooperate with each other in the defense of any litigation that may be filed as a result of this Agreement. This Paragraph survives termination of this Agreement.

18. **EXPENSES:** Districts shall be responsible for all expenses, including but not limited to legal, environmental, engineering consultant's fees, expenses incurred to obtain any and all necessary approvals and to satisfy all environmental requirements, including CEQA and/or NEPA, required to effectuate the Agreement, and to defend against any litigation challenging the Agreement or the approvals, water rights or environmental reviews associated with the Agreement. This Paragraph survives termination of this Agreement.

19. **COOPERATION:** To the extent reasonably required, each Party to this Agreement shall, in good faith, assist the other in obtaining all such necessary approvals and preparation of required environmental documents. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.

20. **WAIVER OR RIGHTS:** Any waiver, at any time, by any Party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

21. **ASSIGNMENT:** No party may assign its rights or obligations under this Agreement, in whole or in part, without prior written consent of all Parties hereto. Any attempted assignment of this Agreement, in whole or in part, without the prior written consent of all Parties hereto is void.

22. **TERMINATION:** Any party may elect to terminate this Agreement upon Notice to the Parties by electronic mail consistent with Paragraph 23. That party providing the termination shall provide the other parties with the specific grounds on which it wishes to terminate the agreement. Termination of this Agreement is effective immediately upon actual electronic mail receipt of Notice by the Parties.

23. **NOTICES:** All notices that are required, either expressly or by implication, to be given by any Party to the other under this Agreement shall be signed for by Districts and SLDMWA and DWR by such officers as they may, from time, authorize in writing to so act.

Any notices to Parties required by this Agreement shall be hand-delivered or mailed, United States first-class postage prepaid, or electronic mail followed by written notice sent by U.S. mail and addressed as follows:

OAKDALE IRRIGATION DISTRICT

Steve Knell, General Manager/Secretary
Oakdale Irrigation District
1205 East "F" Street
Oakdale, CA 95361
Email: srknell@oakdaleirrigation.com
Phone: (209) 847-0341

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

Peter Rietkerk, General Manager
South San Joaquin Irrigation District
11011 East Highway 120
Manteca, CA 95336
Email: prietkerk@ssjid.com
Phone: (209) 249-4645

SAN LUIS & DELTA- MENDOTA WATER AUTHORITY

Frances Mizuno, Assistant Executive Director
P.O. Box 2157
Los Banos, CA 95635
Email: frances.mizuno@sldmwa.org
Phone: 209-832-6200

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Anna Fock, Chief, State Water Project Analysis Office
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001
Email: anna.fock@water.ca.gov
Phone: 916-653-0190

Notice shall be deemed given (a) two (2) calendar days following mailing via regular or certified mail, return receipt requested, (b) one (1) business day after deposit with any one-day delivery service assuring "next day" delivery, (c) upon actual receipt of notice, or (d) upon transmission, if by facsimile, whichever is earlier. The Parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

24. **APPROVALS:** Where the terms of this Agreement provide for action to be based upon a judgment, approval, review or determination of any Party, such terms are not

intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

25. **DISPUTE RESOLUTION:** In the event of any dispute regarding interpretation or implementation of this Agreement, the Director of DWR and authorized representatives from the Districts and SLDMWA shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute is unresolved, the Parties shall use the services of a mutually acceptable consultant in an effort to resolve the dispute. Parties involved in the dispute shall share the fees and expenses of the consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

26. **OTHER AGREEMENTS:** Nothing contained herein restricts the Districts from providing water services and sales to others as authorized by law which do not unreasonably interfere with Districts' obligation hereunder.

27. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement between the Districts, SLDMWA and DWR, and supersedes any oral agreement, statement or promise between them relating to the subject matter of the Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by all Parties to be effective.

28. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

29. **SIGNATURE CLAUSE:**

(a) The signatories represent that they have appropriate authorization to enter into this Agreement on behalf of the Party for whom they sign.

(b) If required by internal governing rules of OID, SSJD, or SLDMWA, that Party as appropriate, shall deliver to DWR a copy of the Board of Directors resolution and/or other documentation authorizing that Party to enter into this Agreement.

30. **GENERAL INTERPRETATION:** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be

drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

PARTIES:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Frances Mizuno, Assistant Executive Director

Date _____

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: Joel Ledesma
Joel Ledesma, Deputy Director

Date 4/27/18

OAKDALE IRRIGATION DISTRICT

By: _____
Steve R. Knell, General Manager

Date _____

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: Peter M. Rietkerk
Peter Rietkerk, General Manager

Date 4/27/2018

drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

PARTIES:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: Frances C. Mizuno
Frances Mizuno, Assistant Executive Director

Date 4/26/18

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Joel Ledesma, Deputy Director

Date _____

OAKDALE IRRIGATION DISTRICT

By: Steve R. Knell
Steve R. Knell, General Manager

Date 4/26/18

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: _____
Peter Rietkerk, General Manager

Date _____

AGREEMENT FOR PILOT PROJECT TRANSFER OF WATER

This AGREEMENT FOR PILOT PROJECT TRANSFER OF WATER ("**Agreement**") is entered into this 23rd day of January, 2023, by and among the OAKDALE IRRIGATION DISTRICT ("**OID**"), the SOUTH SAN JOAQUIN IRRIGATION DISTRICT ("**SSJID**") (collectively, the "**Districts**"), and the BANTA-CARBONA IRRIGATION DISTRICT ("**BCID**"). Districts and BCID are each individually referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, the Parties are California irrigation districts operating under and by virtue of Division 11 of the California Water Code; and

WHEREAS, the Districts have pre-1914 adjudicated water rights to divert 1816.6 cfs from March 1 until November 1 from the Stanislaus River; and

WHEREAS, the Districts are charged with putting their water rights to the fullest beneficial use; and

WHEREAS, the Districts will use their adjudicated pre-1914 water rights to make water available for consumptive use at the Delivery Point (defined herein), and BCID desires to contract to receive this water for reasonable and beneficial use; and

WHEREAS, BCID has pre-1914 rights to the San Joaquin River, and holds a contract with Reclamation for water delivery from the Central Valley Project; and,

WHEREAS, BCID intends by this Agreement to (1) obtain additional surface water for use within its boundaries or by other potential customers conveniently served by existing infrastructure, (2) cause a reduction in the extraction of groundwater, and (3) assist their landowners, water users and water purveyors in obtaining a safe and reliable water supply; and,

WHEREAS, the Districts and BCID desire to enter into a one-year pilot water transfer agreement; and,

NOW, THEREFORE, the Districts and BCID, on the terms and conditions herein set forth, agree as follows:

AGREEMENT

1. **DEFINITIONS:** The following definitions shall govern this Agreement:

A. "**California Environmental Quality Act**" or "**CEQA**" means Public Resources Code Section 21000 et seq.

B. "**CVP**" means the Central Valley Project.

C. **“Delivery”** means the Districts’ water made available at the Delivery Point on the schedule developed pursuant to Section 12 of this Agreement. This definition is intended to include the grammatical variations of the term **“delivery”** including **“deliver”** and **“delivered,”** where such term is used in reference to water.

D. **“Delivery Point”** means the Districts’ water made available in the San Joaquin River and measured at the BCID’s point of diversion from the San Joaquin River, in San Joaquin County at approximately river mile 63.5 located about 5 miles north of Vernalis.

E. **“FNF”** shall mean the Full Natural Flow calculation made by the California Department of Water Resources for the Stanislaus River.

F. **“Reclamation”** means the United States Bureau of Reclamation.

I. **“State Board”** shall mean the State Water Resources Control Board.

K. **“Transfer Water”** shall mean that water to be made available by the Districts to BCID pursuant to Section 3 and the terms and conditions of this Agreement.

2. **TERM:** This Agreement shall become effective upon execution by all Parties and shall terminate on December 31, 2023.

3. **WATER AVAILABLE FOR PURCHASE:** Pursuant to this Agreement, the Districts shall make up to ten thousand (10,000) acre feet of Districts’ pre-1914 water (**“Transfer Water”**) available to BCID, subject to the terms and conditions of this Agreement. Transfer Water will be used within the boundaries of BCID or by other potential customers conveniently served by existing infrastructure. The Transfer Water will be made available by the Districts at the Delivery Point in accordance with the requirements set forth in Section 10.

4. **COMPLIANCE WITH APPLICABLE LAWS AND OBTAINING APPROVALS:**

A. The Parties acknowledge that the transfer of water pursuant to this Agreement is categorically exempt pursuant to CEQA Guidelines Section 15300, qualifies for a Class 1 categorical exemption as provided for in Guidelines Section 15301, qualifies for a Class 4 categorical exemption as provided for in Guidelines Section 15304, qualifies under the general exemption as provided by Guidelines Section 15061(b)(3), and is not barred by one of the exceptions set forth in Guidelines Section 15300.2. The Districts shall be lead agencies for CEQA purposes, and will file the applicable notice of exemption.

B. No approval of the transfer is required by the State Board as the State Board does not have jurisdiction over pre-1914 water rights.

C. The Parties may elect to produce additional documentation in order to comply with CEQA.

5. **PURCHASE PRICE:** BCID shall pay One Hundred Dollars (\$100.00) an acre foot for water diverted and used pursuant to this Agreement.

6. **WATER QUALITY:** The Districts make no warranty or representations as to the quality of the Delivery to BCID.

7. **WATER MEASUREMENT AND DELIVERY:** Districts shall provide the Transfer Water to be made available as set forth in Section 3. The Transfer Water will be made available and measured at the Delivery Point. Measurements shall be provided monthly to the Districts.

8. **PAYMENT:**

A. The Districts shall invoice BCID for Transfer Water every month. The invoices will be based on the amount diverted and measured at the Delivery Point on a monthly basis based upon reconciliation of actual diversion numbers by the Parties.

B. BCID shall remit payment within sixty (60) days of receipt of the invoice.

C. Should BCID arrange to deliver transfer water to a party outside of its boundaries, BCID will notify the Districts of such an arrangement and the Parties agree to negotiate in good faith for the revenue gained in excess of costs to the Parties.

9. **INTEREST:** BCID shall pay the Districts interest at an annual interest rate of ten (10) percent on any charges that remain unpaid sixty (60) days beyond the due date.

10. **DISTRICTS' LIMITING CONDITIONS:** The Districts' obligation to make available the quantity of Transfer Water specified in Section 3 of this Agreement will, at all times, be subject and subordinate to the following conditions:

A. The terms and conditions of the Districts water rights as they currently exist; and

B. The availability of pre-1914 water in the Stanislaus River at Goodwin Dam as determined by the FNF calculation; and

C. The rights of landowners, within the boundaries of OID or SSJID, to the beneficial use of their respective District's water as it relates to the delivery of water purchased pursuant to this Agreement; and

D. The rights of landowners outside the boundaries of OID who have signed up to receive water under the districts 10 year program; and

E. Applicable federal and state laws now in existence, and as modified from time to time, which may affect the Districts' rights or obligations; and

F. The rights of the cities of Lathrop, Manteca, Escalon, and Tracy pursuant to each city's Water Supply Development Agreement with SSJID.

The conditions described in (A) – (F), inclusive, above, are collectively referred to as the “**Districts’ Limiting Conditions**”. Nothing in this Agreement shall be construed so as to contradict, conflict with, or otherwise be contrary to the provisions of any of the Districts’ Limiting Conditions; and in the event of any conflict between any of the Districts’ Limiting Conditions and this Agreement, the Districts’ Limiting Conditions shall control. The Districts shall not be deemed to be in violation of this Agreement if any of the Limiting Conditions preclude or inhibit (in whole or in part) the Districts’ performance under the Agreement.

11. **BCID LIMITING CONDITIONS:** BCID’s obligation to purchase Transfer Water specified in Section 3 of this Agreement will, at all times, be subject and subordinate to the following conditions:

A. BCID shall be obligated to pay only for Transfer Water that has been scheduled and delivered by Districts; and

B. Applicable federal and state laws now in existence, and as modified from time to time, which may affect BCID’s rights or obligations.

12. **DELIVERY SCHEDULE:**

A. Consistent with this Agreement and specifically Section 3, the Districts will make the Delivery available at the Delivery Point on a schedule developed by the Districts and BCID (“**Delivery Schedule**”). The Delivery Schedule will be limited by the Districts’ ability to divert March 1 – November 1, the daily FNF and Reclamations’ determination of allocation to BCID, and BCID’s needs.

B. BCID is under no obligation to schedule and take delivery of water. BCID has sole discretion whether to schedule and take delivery of water. If BCID schedules water and the districts deliver water then BCID will pay for the water delivered, even if BCID can not divert the water.

13. **WATER SUPPLY REDUCTIONS:** The Districts may reduce or terminate the Delivery for any of the following reasons: the Districts’ Limiting Conditions arise; failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to the Districts; diversions outside the control of the Districts which may hereafter be authorized for others from the North, Middle or South Forks of the Stanislaus River; and any action, legislation, ruling or determination adverse to the Districts affecting the Agreement and beyond the reasonable control of the Districts. The Districts shall make good faith efforts to avoid such reductions, but BCID agrees that Districts shall not be liable for reductions of supply in this Agreement due to the above-stated causes.

14. **LITIGATION COSTS:** The Districts agree to defend their own interests in any litigation or regulatory action challenging the validity of the Districts' water rights. The Parties shall each defend their own interests in litigation or regulatory action involving this Agreement, including environmental compliance and purchase of the Transfer Water. All Parties agree to reasonably cooperate with each other in the defense of any litigation that may be filed as a result of this Agreement. This Section shall survive termination or expiration of this Agreement.

16. **COOPERATION:** To the extent reasonably required, each Party to this Agreement shall, in good faith, assist the other Parties in obtaining all such necessary approvals and preparation of required environmental documents. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.

17. **WAIVER OF RIGHTS:** Any waiver, at any time, by any Party of its rights with respect to a breach, default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default, or matter with respect to this Agreement.

18. **NOTICES:** All notices that are required, either expressly or by implication, to be given by any Party to the other under this Agreement shall be signed for by the Districts and BCID by such officers as they may, from time to time, authorize in writing to so act. Any notices to Parties required by this Agreement shall be hand-delivered, mailed by United States first-class postage prepaid, or delivered by electronic mail followed by written notice sent by U.S. mail, and addressed as follows:

OAKDALE IRRIGATION DISTRICT
Scot Moody, General Manager/Secretary
Oakdale Irrigation District
1205 East "F" Street
Oakdale, CA 95361
Email: smoody@oakdaleirrigation.com
Phone: (209) 847-0341

SOUTH SAN JOAQUIN IRRIGATION DISTRICT
Peter Rietkerk, General Manager
South San Joaquin Irrigation District
11011 East Highway 120
Manteca, CA 95336
Email: prietkerk@ssjid.com
Phone: (209) 249-4645

BANTA-CARBONA IRRIGATION DISTRICT
David Weisenberger, General Manager
Banta-Carbona Irrigation District
3514 W. Lehman Road

Tracy, California 95304
Email: dweisenberger@banta-carbona.org
Phone: (209) 835-4670

Notice shall be deemed given by operation of any of the following, whichever occurs earliest: (1) two (2) calendar days following mailing via regular or certified mail, return receipt requested, (2) One (1) business day after deposit with any one-day delivery service assuring "next day" delivery, (3) upon actual receipt of notice, which, for notice by electronic mail, will be deemed received on the day the electronic mail is sent if the electronic mail is sent to an address or addresses listed in this Section. The Parties shall promptly give written notice to each other of any change of address and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

20. **APPROVALS:** Where the terms of this Agreement provide for action to be based upon a judgment, approval, review, or determination of any Party, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

21. **DISPUTE RESOLUTION:** In the event of any dispute regarding interpretation or implementation of this Agreement, authorized representatives from the Districts and BCID shall endeavor to resolve the dispute by meeting within thirty (30) days after the request of a Party to resolve the dispute. If the dispute remains unresolved after such meeting, the Parties shall use the services of a mutually acceptable consultant in an effort to resolve the dispute. Parties involved in the dispute shall share the fees and expenses of said consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

22. **OTHER AGREEMENTS:** Nothing contained within this Agreement restricts the ability of the Districts to provide water services and sales to its existing landowners, municipalities and outside lands.

23. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement between the Districts and BCID, and supersedes any oral agreement, statement, or promise between them relating to the subject matter of the Agreement. Any amendment of this Agreement, including oral modifications, must be reduced to writing and signed by all Parties to be effective.

24. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one full set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.


25. **SIGNATURE CLAUSE:** The signatories represent that they have appropriate authorization to enter into this Agreement on behalf of the Party for whom they sign.

26. **GENERAL INTERPRETATION:** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.


PARTIES:

BANTA-CARBONA IRRIGATION DISTRICT

By: 
David Weisenberger, General Manager

Date: January 23, 2023

OAKDALE IRRIGATION DISTRICT

By: 
Scot Moody, General Manager

Date: 1/30/23

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: 
Peter Rietkerk, General Manager

Date: January 25, 2023