



MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Frances Mizuno, Special Projects Administrator

DATE: April 8, 2021

RE: Resolution Authorizing Execution of 2021 Water Purchase and Sale and Water Transfer Approval Agreements Pursuant to Final Long-Term Water Transfers Environmental Impact Report and Authorizing Actions Related Thereto

BACKGROUND

San Luis & Delta-Mendota Water Authority agricultural water service and repayment contractor members received an initial allocation of 5% of their full contractual supply for irrigation with availability subject to further notice and 55% for M&I for the 2021 water year, and current projections show that subsequent increases in allocations, if any, will be made later in the season and are expected to be minimal. The Water Authority Long Term Water Transfer Activity Agreement Members requested the Water Authority to purchase transfer water from the North of Delta Sacramento River Settlement Contractors to supplement their CVP supply. Water Authority staff have been engaged for the past months negotiating with potential sellers to purchase water made available for transfer through groundwater substitution and/or crop idling/shifting.

ISSUE FOR DECISION

Whether the Board of Directors should adopt a resolution authorizing execution of 2021 Water Purchase and Water Transfer Approval Agreements pursuant to the Final Long-Term Water Transfers Environmental Impact Report and authorizing actions related thereto.

RECOMMENDATION

We recommend the Board of Directors adopt the resolution authorizing execution of 2021 Water Purchase and Sale and Water Transfer Approval Agreements pursuant to the Final Long-Term Water Transfers Environmental Impact Report and authorizing actions related thereto.

ANALYSIS

There are at least eighteen (18) sellers willing to sell up to approximately one-hundred and ninety thousand (190,000) acre-feet of groundwater substitution and crop idling/shifting water at a price of \$575/AF. Water Purchase Agreements have been provided to all potential sellers and are ready for final execution upon Board authorization to execute the agreements.

The estimated quantity of water to be made available is based on groundwater substitution and crop idling/shifting water starting in May through September. In order for this water to be available in May-June, Reclamation must be able to “back-up” this water into Shasta Reservoir for storage for subsequent release in July-September during the period when the water can be pumped at Jones or Banks Pumping Plants. The call date for this water is on April 14, 2021 and conditioned on Reclamation confirming they have the ability to “back-up” the water. Although the new ROC on LTO Biological Opinions allow for the water transfer window to extend through November, the Long-Term Water Transfers EIR/Supplemental Environmental Impact Statement evaluated the pumping window between July-September. In the event transfers during the October-November window are proposed, further CEQA review of such transfers may be required.

IMPLICATIONS

If the Board does not authorize the Executive Director to execute water purchase agreements, Forbearance Agreements and other agreements necessary for water transfers in 2021, certain member agencies will not have access to this supplemental water supply needed in this water supply shortage year.

BUDGET

There is no impact to the Water Authority’s budget, as Activity Agreement participating members will pay all costs associated with the North of Delta water transfers.

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2021-___

RESOLUTION AUTHORIZING EXECUTION OF 2021 WATER PURCHASE AND SALE AND WATER TRANSFER APPROVAL AGREEMENTS PURSUANT TO FINAL LONG-TERM WATER TRANSFER ENVIRONMENTAL IMPACT REPORT AND AUTHORIZING ACTIONS RELATED THERETO

WHEREAS, San Luis & Delta-Mendota Water Authority (“Water Authority”) agricultural water service and repayment contractor members received an initial allocation of 5% of their full contractual supply for irrigation with availability subject to further determination and 55% for municipal and industrial (“M&I”) for the 2021 water year, and current projections show that subsequent increases in allocations, if any, will be made later in the season and are expected to be minimal; and

WHEREAS, to assist its members, the Water Authority has initiated actions with the Bureau of Reclamation (“Reclamation”), the California Department of Water Resources (“DWR”), and with certain Sacramento River and Feather River contractors (such contractors being jointly referred to as the “North-of-Delta Sellers”) to make water available to members of the Water Authority during water year 2021; and

WHEREAS, the Board of Directors of the Water Authority (the “Board”) has considered the form of the template one-year 2021 Water Purchase and Sale Agreement, which sets forth the terms and conditions to be entered into with certain Sacramento River and Feather River contractors (collectively with any additional agreements with such North-of-Delta Sellers, the “2021 Water Purchase and Sale Agreements”), subject to the agreement having been presented to the Board and being on file with the Secretary hereof; and

WHEREAS, in order to implement the 2021 Water Purchase and Sale Agreements with the Sacramento River and Feather River contractors, the Water Authority intends to enter into Water Purchase Approval Agreements by and between each proposed Sacramento River contractor North-of-Delta Seller, Reclamation, and the Water Authority (collectively, the “2021 Water Transfer Approval Agreements”), a draft sample form of which has been presented to the Board and is on file with the Secretary hereof; and

WHEREAS, pursuant to the National Environmental Policy Act (“NEPA”), Reclamation acting as Federal lead agency, and pursuant to the California Environmental Quality Act (“CEQA”), the Water Authority acting as State lead agency, prepared a joint Environmental Impact Report (“EIR”)/Supplemental Environmental Impact Statement (“SEIS”) entitled, “Long-Term Water Transfers,” analyzing the effects on the environment of a range of potential transfers

over the 10-year period 2015-2024 (the Final Long-Term Water Transfers EIR-SEIS), including those to be implemented through the 2021 Water Purchase and Sale Agreements; and

WHEREAS, pursuant to CEQA, on April 9, 2020, the Water Authority certified the Final Long-Term Water Transfers Environmental Impact Report, and adopted findings based on its record of proceedings showing that the potentially significant effects on the environment of a range of potential transfers over the 10-year period 2015-2024, including those to be implemented through the 2021 Water Purchase and Sale Agreements, would be avoided or substantially reduced to less-than-significant levels; and

WHEREAS, the Board has previously authorized that certain Long Term North to South Water Transfer Program Activity Agreement, establishing the terms under which the benefits and obligations of the 2021 Water Purchase Agreements will be shared by the Activity Agreement Members, which has been executed by the Water Authority and its participating members.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS, THAT:

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. The Board hereby approves the proposed template 2021 Water Purchase and Sale Agreement, and the Executive Director or his delegate is hereby authorized to execute an Agreement tailored for each of the North-of-Delta Sellers willing to make available water during 2021 in substantially the form that has been presented to the Board, subject to such revisions, modifications, additions, or deletions as the executing officer may approve prior to execution, including but not limited to final pricing, call date, and any option payment terms.

Section 3. The Executive Director or Chief Operating Officer are hereby authorized and directed to execute on behalf of the Water Authority those certain 2021 Water Transfer Approval Agreements in substantially the form presented to the Board and on file with the Secretary hereof, subject to such additions, deletions and other revisions as the executing officer shall approve prior to execution.

Section 4. The authorizations granted to the Executive Director under Sections 2 and 3 of this Resolution are conditioned upon 1) the effects of the transfer from the respective Sacramento River or Feather River contractor having been analyzed in the Final Long-Term Water Transfers EIR-SEIS; and 2) the written consent of at least one Long Term North to South Water Transfer Program Activity Agreement Member to purchase the water made available through the 2021 Water Purchase and Sale Agreements on the finally negotiated terms.

Section 5. The Executive Director, Chief Operating Officer, and any Water Authority employees, consultants, or agents directed by the Executive Director are further authorized and directed to take such additional steps, and to execute such additional documents, including but not limited to any conveyance agreements with DWR required to effect the delivery of transfers authorized by this Resolution, as may be required or reasonably necessary or convenient for completing and implementing the transfer activities authorized by this Resolution.

PASSED, APPROVED, AND ADOPTED this 8th day of April, 2021, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Cannon Michael, Chairman
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

Federico Barajas, Secretary

I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the San Luis & Delta-Mendota Water Authority, a California joint powers agency, at a special meeting of the Board of Directors thereof duly called and held on the 8th day of April, 2021.

Federico Barajas, Secretary

WATER PURCHASE AND SALE AGREEMENT
BY AND BETWEEN _____ AND THE SAN LUIS & DELTA MENDOTA
WATER AUTHORITY

This Agreement is entered into this ___ day of _____, 2021 by and between _____, hereinafter referred to as “**Seller**” or “_____,” and the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, hereinafter referred to as “**Buyer**” or “**Water Authority**.” _____ and the Water Authority may be referred to herein individually as a “**Party**” or jointly as “**Parties**.”

RECITALS

WHEREAS, _____ is a California irrigation district operating under and by virtue of Division 11 of the California Water Code and is empowered to sell and transfer water to Buyer as provided for in this Agreement; and

WHEREAS, Buyer is a California joint powers authority operating under and by virtue of Section 6500, et seq., of the California Government Code and is empowered to purchase water from Seller as provided for in this Agreement; and

WHEREAS, Buyer’s members are 27 public agencies representing approximately 1,100,000 acres of land within the western San Joaquin Valley, San Benito and Santa Clara Counties, 25 agencies of which that obtain water from the United States Bureau of Reclamation (“**Reclamation**”) through the federal Central Valley Project (“**CVP**”) under water service or repayment, exchange/settlement, or refuge contracts; and

WHEREAS, Water Authority agricultural water service contractor and repayment contractor members received an initial allocation of 5% of their full contractual supply for irrigation for the 2021 water year, and current projections show that subsequent increases in allocations, if any, will be made later in the season and are expected to be minimal; and

WHEREAS, Seller holds a Sacramento River Settlement Contract with Reclamation (Contract No. _____), which governs Seller’s diversions of water from the Sacramento River and its tributaries for beneficial uses; and

Commented [FM1]: Change as appropriate for Seller

WHEREAS, Seller is willing to make water available for sale and delivery to the Water Authority by certain forbearance action or by petition to the State Water Resources Control Board under its water rights by increasing the quantity of groundwater pumped within Seller’s service area and/or idling/shifting crops, thereby reducing the amount of surface water Seller diverts and uses for irrigation within its service area in 2021; and

WHEREAS, on behalf of Water Authority participating members (the “**Transfer Participants**”), Buyer intends by this Agreement to obtain a supplemental water supply for the Transfer Participants’ use for irrigation in 2021 to provide water required for reasonable and beneficial use given the anticipated reduction in deliveries of contract quantities from the CVP; and

Initials: _____

WHEREAS, Seller, Buyer, and Reclamation will execute a companion consent to transfer agreement (the “**Approval Agreement**”) for 2021 to set forth the terms and conditions under which Reclamation will facilitate Seller making water available to the Water Authority via Seller’s actions in 2021; and.

WHEREAS, Seller, Buyer and the California Department of Water Resources (“**DWR**”) may execute a conveyance agreement (the “**DWR Conveyance Agreement**”) for 2021 to set forth the terms and conditions which DWR will facilitate the conveyance of the Agreement-Water utilizing the Banks Pumping Plant and the California Aqueduct.

NOW, THEREFORE, Seller and Buyer, on the terms and conditions set forth herein, agree as follows:

AGREEMENT

1. **DEFINITIONS:** The following definitions shall govern this Agreement:
 - a. “**Agreement-Water**” is the surface water transferred and made available to Buyer through this Agreement as a result of Seller’s actions through groundwater substitution and/or crop idling/shifting, in accordance with California Water Code Sections 380 et seq., 1745, et seq. and 22259.
 - b. “**Point of Delivery**” means Seller’s primary point of diversion of surface water at the Seller’s point of diversion on the Sacramento River.
 - c. “**Carriage Losses and Depletions**” mean water losses imposed on Agreement-Water by Reclamation or DWR. Carriage Losses and Depletions shall not, however, include the Assumed Depletion Loss defined in Paragraph 4.c.
2. **TERM:** This Agreement shall commence on the date set forth above and expire on December 31, 2021, unless terminated sooner by written agreement of the Parties pursuant to the provisions set forth herein; provided, however, that any obligations under this Agreement to be performed after December 31, 2021, shall survive the expiration of the term of this Agreement and shall be fully enforceable.
3. **AGREEMENT TO SELL:** Seller agrees to sell and make available at the Point of Delivery, and the Water Authority agrees to purchase, Agreement-Water during the term of this Agreement for the Transfer Participants’ reasonable and beneficial use, in the quantities described and subject to the terms and conditions of this Agreement.
 - a. All Agreement-Water will be used within the boundaries of Buyer’s Transfer Participants.
 - b. The Water Authority shall be solely responsible for determining the identities of its members who shall receive an allocation of the water acquired and the quantity allocated to each of them.

Commented [FM2]: Change as appropriate.

Initials: _____

4. **QUANTITY AND ADJUSTMENTS TO QUANTITY:**

- a. **Quantity.** Seller agrees to sell and make available at the Point of Delivery to Buyer up to _____acre-feet of Agreement-Water through groundwater substitution and/or _____acre feet of Agreement-Water through crop idling, subject to Buyer's call on Agreement-Water pursuant to Paragraphs 6 and 7, and subject to the other terms and conditions of this Agreement.
- b. **Availability.** The quantity of Agreement-Water that Seller makes available for transfer through groundwater substitution and/or crop idling actions during any month shall be as determined by Reclamation in accordance with the terms and conditions of the Approval Agreement. Following Seller's actions to make Agreement-Water available at the Point of Delivery, Reclamation shall determine and confirm the final amount of Agreement-Water made available during such month.
- c. **Groundwater Depletion.** Water pumped by Seller, if any, for use in place of the surface water made available to Buyer pursuant to this Agreement will be subject to an Assumed Depletion Loss of 13% or an alternate amount of depletion losses as determined by Reclamation in accordance with the Final Long-Term Water Transfers EIR-SEIS. Seller shall bear the cost of the Assumed Depletion Losses, and payment due to Seller is based on the net quantity of water made available to Buyer after Assumed Depletion Losses are applied. For purposes of this Agreement, "**Assumed Depletion Loss**" means the total reduction in stream flow assumed by Reclamation to result from additional groundwater pumping that may occur as a result of this Agreement. The Parties acknowledge that, as of the effective date of this Agreement, Seller does not concede that there is adequate data or analyses supporting the Assumed Depletion Loss. The Assumed Depletion Loss for this Agreement shall in no manner whatsoever constitute a precedent for any determination or allocation of depletion loss in connection with any future water transfer involving Seller, or in connection with any determinations by any regulatory agency regarding the classification of the water pumped by the Seller. Nothing in this Agreement constitutes an admission by Seller for purposes of future transfers that any regulatory requirements imposed on the transfer under this Agreement are required under applicable law.
- d. **Losses.** Buyer shall bear all other Carriage Losses and Depletions, including without limitation Delta carriage water loss and California Aqueduct/Delta-Mendota Canal conveyance losses imposed on Agreement-Water between Seller's Point of Delivery and Buyer's delivery to the Transfer Participants within Buyer's service area.
- e. **Operational/Regulatory Limitations on Buyer's Ability to Export/Litigation Termination.** If Buyer makes a final call for Agreement-Water made available by groundwater substitution, but due to regulatory or operational constraints, Reclamation is unable to store such water at Reclamation's facilities on the Sacramento River or to deliver such water to Buyer through Delta pumping facilities at the time such water is scheduled to be made available by Seller, or if Reclamation terminates the Approval

Initials: _____

Agreement, Buyer shall provide to Seller at least a 72-hour notification to reduce, suspend, or terminate groundwater pumping. The Parties shall promptly meet and confer regarding the details and specifics of any such regulatory and operational constraints, and cooperate in good faith to determine when Seller's groundwater pumping may resume making water available to Buyer. If the Parties cannot develop a mutually acceptable plan for the resumption of groundwater pumping and the diversion of all or a portion of the transfer water, Buyer shall still be obligated to pay for all of the water made available prior to the end of the 72-hour notification period, but not for any groundwater that has at that time not yet been pumped by Seller. Further, if Buyer and Seller mutually agree to terminate this Agreement under Paragraph 15.b or 17.b.i, Buyer may provide the same 72-hour notification and shall be obligated to pay for all of the water made available up to the end of the 72-hour notification period, but not for any groundwater that has not yet been pumped by Seller at the end of the 72-hour period.

5. **PURCHASE PRICE:** Subject to Buyer's call on Agreement-Water under Paragraphs 6 and 7, Buyer agrees to purchase and pay for Agreement-Water at the Point of Delivery. The purchase price shall be \$575 per acre-foot for water made available by Seller and that Reclamation determines is transferrable.

Notwithstanding the foregoing, the price per acre-foot will not be lower than the price Buyer pays to any other Seller in the Sacramento Valley in 2021 for groundwater substitution or crop idling/shifting transfers.

6. **CALL DATE AND "TAKE OR PAY" OBLIGATION FOR WATER MADE AVAILABLE THROUGH CROP IDLING/SHIFTING:**

CHECK THIS BOX IF YOU ARE MAKING WATER AVAILABLE THROUGH CROP IDLING/SHIFTING, AND THIS SECTION 6 WILL APPLY TO THIS AGREEMENT.

- a. **Call.** Provided Reclamation is able to confirm prior to April 12, 2021 its ability to "back-up" water to be made available prior to July 1, 2021 and store the water in Shasta Reservoir for release after July 1, 2021, Seller shall notify Buyer and Reclamation, in writing, of the quantity of Agreement-Water offered by April 13, 2021. On or before 5:00 p.m. on April 14, 2021, (the "**Call Date**"), Buyer shall notify Seller and Reclamation, in writing, of the quantity of offered Agreement-Water Buyer intends to purchase.
- b. **Option to Extend.** If Reclamation's ability to "back-up" Agreement-Water in Shasta Reservoir remains uncertain as of the Call Date under Paragraph 6.a, upon mutual agreement between Buyer and Seller, Buyer has the option to extend the call date to May 1, 2021 (the "**Extended Crop Idling Call Date**").
- c. **"Take or Pay" Obligation.** Buyer shall have a "take or pay" obligation upon Buyer's notification to Seller of the quantity of Agreement-Water Buyer wishes to purchase on

Initials: _____

the Call Date or Extended Crop Idling Call Date, and Buyer may not elect to order or pay for less than the amount specified in the notice to Seller except as provided in Paragraph 17.b.i.

- d. **Option.** Concurrently with the notice given on the Call Date or Extended Crop Idling Call Date, as applicable, Buyer shall tender to Seller an option payment of \$20 per acre-foot for the quantity of Agreement-Water Buyer has specified on such Call Date/ Extended Crop Idling Call Date. All option payments will be applied to the total purchase price of water requested by Buyer on the Call Date/Extended Crop Idling Call Date; however, the option payment shall be non-refundable.

7. CALL DATE AND “TAKE OR PAY” OBLIGATION FOR WATER MADE AVAILABLE THROUGH GROUNDWATER SUBSTITUTION:

CHECK THIS BOX IF YOU ARE MAKING WATER AVAILABLE THROUGH GROUNDWATER SUBSTITUTION, AND THIS SECTION 7 WILL APPLY TO THIS AGREEMENT.

- a. **Call.** Provided Reclamation is able to confirm prior to April 12, 2021 its ability to “back-up” water made available prior to July 1, 2021 and store the water in Shasta Reservoir for release after July 1, 2021, Seller shall notify Buyer and Reclamation, in writing, of the quantity of Agreement-Water offered by April 13, 2021. On or before 5:00 p.m. on April 14, 2021, (the “**Call Date**”), Buyer shall notify Seller and Reclamation, in writing, of the quantity of offered Agreement-Water Buyer intends to purchase.

Alternatively, if Reclamation is unable to confirm the ability to “back-up” water in Shasta prior to the April 12, 2021 notification date but is able to confirm the ability to “back-up” water prior to July 1, 2021, Seller and Buyer shall agree to subsequent notification, Call Date once Reclamation confirms the ability to “back-up” water.

If Reclamation is unable to “back-up” water in Shasta Reservoir prior to July 1, 2021, Seller will notify Buyer and Reclamation, in writing, of the quantity of Agreement-Water offered by June 7, 2021. On or before 5:00 p.m. on June 11, 2021, (the “**Alternate Call Date**”), Buyer shall notify Seller and Reclamation, in writing, of the quantity of offered Agreement-Water Buyer intends to purchase. Buyer shall provide further notice, on or before 5:00 p.m. on June 25, 2021 (the “**Alternate Final Call Date**”) of the final amount of water Buyer agrees to purchase from Seller.

- b. **Option.** Concurrently with the notice given on the Call Date or Alternate Call Date, as applicable, Buyer shall tender to Seller an option payment of \$20 per acre-foot for the quantity of Agreement-Water Buyer has specified on such Call Date. All option payments will be applied to the total purchase price of water requested by Buyer on the Call Date or Alternative Call Date; however, the option payment shall be non-refundable.

Initials: _____

- c. **Adjustment of Call Dates.** The Parties may agree to set an earlier offer date or Call Date upon their confirmation with Reclamation that Agreement-Water may be made available during the April through June period.
- d. **“Take or Pay” Obligation.** Buyer will have a “take or pay” obligation upon Buyer’s notification to Seller of the quantity of Agreement-Water Buyer wishes to purchase on the Call Date or the Alternate Call Date, as applicable, and Buyer may not elect to order or pay for less than the amount specified in the notice to Seller, except when and to the extent Buyer has provided 72 hours’ notice under Paragraph 4.e or the Parties have mutually agreed to terminate the Agreement under Paragraphs 15.b or 17.b.i. As specified in Paragraph 4.e above, Buyer’s take or pay obligation for water that is not made available following such notice is excused.

8. **INVOICING AND PAYMENTS:** The Buyer shall make payment(s) directly to the Seller as set forth in this Paragraph.

- a. Seller shall invoice Buyer on a monthly basis following the end of each calendar month for the Agreement-Water made available during such calendar month based on the \$575 per acre-foot rate. Buyer shall pay such invoices within forty-five (45) days of Buyer’s receipt of the invoice and interest shall be paid at the annual interest rate of 10% on any invoices that remain unpaid forty-five (45) days after receipt of the invoice. Payment shall be made to:

Name
Address
Email

- b. Buyer will retain ten percent (10%) of invoice amounts pending Reclamation’s final confirmation that the quantity of Agreement-Water was made available at the Point of Delivery. Based upon the final confirmation of Agreement-Water made available at Seller’s Point of Delivery, Buyer is authorized to calculate the total payments due from Buyer to Seller, to withhold any overpayment, and to remit the balance of the 10% withheld. Interest shall not accrue as to amounts withheld pursuant to this subsection. Buyer shall remit the final ten percent, adjusted as may be provided in this Paragraph, within thirty (30) days following Reclamation’s final confirmation of Agreement-Water made available at the Point of Delivery.
- c. Seller shall provide Buyer with detailed invoices supporting all expenses incurred pursuant to Paragraph 17, and Buyer shall pay such invoices per Paragraph 8.a. Seller shall provide Buyer all invoices for reimbursable expenses pursuant to Paragraph 17 no later than ninety (90) days after the termination of this Agreement. Notwithstanding the foregoing, invoices specifically related to reimbursable expenses for preparation and completion of the final 2021 water transfer report required under the Approval Agreements, shall be provided no later than one-hundred and eighty (180) days after the termination of the Agreement.

Initials: _____

- d. Failure by Seller to make Agreement-Water available at the Point of Delivery as provided under this Agreement will reduce Buyer's obligation to make payment for Agreement-Water on a per-acre foot basis.
9. **REFUNDS:** In the event Seller fails to provide the amount of Agreement-Water Buyer has purchased in accordance with Paragraphs 6 and 7, subject to Seller's right to terminate for shortages as stated in Paragraph 11, Seller will promptly refund to Buyer any payments made for purchased water not provided at the Point of Delivery by Seller. Any refunds shall include interest at the Local Agency Investment Fund rate for the period the money was held.
10. **WATER QUALITY:** The Seller makes no warranty or representations as to the quality or fitness for use of the Agreement-Water. Buyer, at its own expense, shall be responsible for all necessary measures for the testing, treatment, and other steps required for the intended uses of the Agreement-Water by the Buyer.
11. **SHORTAGE PROVISION/TERMINATION:** If the Seller's surface water supplies are reduced below 75% of its contract quantities or if Seller is unable to make available the full quantity of Agreement-Water listed in Paragraph 4.a due to unforeseen circumstances or for reasons beyond Seller's control, Seller, at its sole discretion, may terminate this Agreement or, may suspend, reduce, or cease groundwater pumping. Prior to termination or, as applicable, as quickly as possible following any action to suspend, reduce or cease groundwater pumping, Seller and Buyer shall confer to determine if, as an alternative to termination, the amount or price of Agreement-Water to be made available by Seller under this Agreement can be adjusted.
12. **WATER SCHEDULING:** Buyer, in coordination with Seller and Reclamation, will develop a schedule for delivery of Agreement-Water called upon by Buyer, made available by Seller at the Point of Delivery in accordance with the Approval Agreement, and to assure, to the extent possible, that Agreement-Water made available by Seller can be pumped at the C.W. "Bill" Jones Pumping Plant and/or the Harvey O. Banks Pumping Plant.
13. **DIVERSION COSTS:** All fees, permitting, construction, reconstruction, and maintenance costs for facilities necessary or used to divert Agreement-Water once it is delivered at the Point of Delivery by Seller shall be borne solely by Buyer. Buyer is solely responsible for all costs associated with treatment, diversion head-works, pumping facilities, etc., to divert, convey, transport, treat, and deliver Agreement-Water to the Buyer's Transfer Participants.
14. **ENVIRONMENTAL REVIEW:** Reclamation and Buyer have completed the Final Long-Term Water Transfers EIR-SEIS and the Buyer has certified the EIR on November 7, 2019 and Reclamation signed the Record of Decision on April 7, 2020, which considered the environmental effects of the transfers described in this Agreement. Buyer and Seller intend to rely on the Final EIS-EIR in compliance with CEQA and NEPA for the purposes of performing under this Agreement.
15. **TERMINATION:** In the event of termination of this Agreement or Reclamation's termination of the Approval Agreement, the Parties shall thereafter be under no further obligation or responsibility hereunder, and will release the other party from further

Initials: _____

obligations under this Agreement, except for their respective shares of costs incurred prior to the effective date of termination, which includes administration expenses under Paragraph 17.a and may include certain litigation costs under paragraph 17.b and Buyer's take or pay obligation under Paragraphs 6.c and 7.d, unless limited by Paragraph 17.b.i. The Parties to this Agreement shall have the right of termination as set forth in Paragraph 11, and this Paragraph:

- a. If regulatory approval(s) and any additional required environmental review actions (e.g. CEQA and/or NEPA compliance actions) are not satisfied by May 1, 2021, either Party may, by written notice to the other Party, terminate this Agreement unless both Parties agree to extend the date for such approval(s) and/or environmental review.
- b. If, in the reasonable judgment of either Seller or Buyer, the costs of any litigation challenging this Agreement, any restrictions, fees, charges or costs imposed in the approvals of any regulatory agency, mitigation measures imposed by any agency pursuant to CEQA or NEPA, or any relief afforded to third parties in any 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 that Party so determining may terminate this Agreement. If Buyer so elects to terminate the Agreement, Buyer shall still be obligated to pay for all of the Agreement-Water made available prior to such termination, for administrative expenses under Paragraph 17.a and litigation expenses under 17.b, and for Buyer's take or pay obligation under Paragraphs 6.c and 7.d; provided, if Seller terminates in accordance with 17.b.i, Buyer shall not be obligated for Buyer's take or pay obligation under Paragraph 6.c and 7.d for all Agreement-Water that has not yet been made available as of the date of such termination.

16. CONDITIONS PRECEDENT/APPROVALS:

- a. Except as provided in Paragraph 17 with respect to reimbursement of costs, the Parties' performance under this Agreement is contingent on the Parties obtaining any and all necessary approvals from any third-party agency for delivery of Agreement-Water.
- b. It is a condition precedent to Seller's obligations to make available Agreement-Water, and to Buyer's obligation to pay for Agreement-Water under this Agreement, that Reclamation, Seller, and Buyer execute a three-party Approval Agreement substantially in the form attached as Exhibit "A," by the terms of which Reclamation accepts Agreement-Water as water available to Reclamation for subsequent appropriation/delivery under its state water rights permits for the CVP and agrees to the terms and conditions for its delivery of such water to Buyer. If such Approval Agreement is not executed, or if the required approval of any other third party agency for delivery of Agreement-Water is not provided by May 1, 2021, Buyer shall have no further obligations under this Agreement, except to pay its respective share of

Initials: _____

administrative costs incurred prior to the effective date of termination per Paragraph 17.a, and for any litigation expenses assigned to Buyer under Paragraph 17.b.

- c. Seller is responsible for obtaining necessary approvals from Reclamation, the Department of Water Resources (“DWR”), and if necessary, the State Water Resources Control Board (“SWRCB”), to transfer the Agreement-Water at the Point of Delivery. Buyer is responsible for obtaining all authorizations from Reclamation and DWR for conveyance of the Agreement-Water to Buyer’s place of use.

17. ADMINISTRATIVE AND LITIGATION EXPENSES:

- a. **Administrative Expenses.** Buyer will reimburse Seller’s reasonable out-of-pocket expenses, including but not limited to actual legal and engineering consultants’ fees and expenses incurred by Seller in preparing, negotiating, administering, implementing, and supporting this Agreement up to a maximum of \$75,000 for quantities of Agreement-Water made available that is greater to 1,000 AF and \$37,500 for quantities of Agreement-Water made available that is equal to or less than 1,000 AF; provided, however, if Buyer provides to any other Sacramento Valley seller for a 2021 transfer a maximum reimbursement for reasonable out-of-pocket expenses greater than \$75,000 or \$37,500, that greater reimbursement maximum will be applied to Seller. Buyer shall not be required to reimburse Seller for time spent by its directors, officers or employees relating to this transfer. Seller shall be entitled to this reimbursement starting on the date of execution of the Letter of Intent regarding 2021 Water Transfers for costs incurred for the 2021 water transfer, regardless of whether Agreement-Water is transferred or if the Agreement is terminated under Paragraphs 11 or 15. If Seller fails to provide any Agreement-Water due to its own action or inaction, Seller will not be entitled to reimbursement and any reimbursements made by the Buyer will be fully refunded by the Seller to the Buyer; provided, if Seller terminates the Agreement because of a reduction in water supply under Paragraph 11, Seller shall be entitled to reimbursement despite the termination. Invoicing of administrative expenses shall be pursuant to the procedures set forth in Paragraph 8.a.

- b. **Litigation, Attorneys’ Fees and Third-Party Challenges.**

- i. Subject to subsections 17.b.ii and 17.b.iii, in the event of litigation or an administrative challenge related to this Agreement, Seller and Buyer will promptly meet and confer to perform a risk assessment of the litigation/challenge, and cooperate in good faith to determine whether to terminate the Agreement due to the litigation/challenge. Either Party may elect to terminate the Agreement due to any such litigation/challenge. If Buyer so elects to terminate the Agreement due to any such litigation/challenge, Buyer shall still be obligated to pay for all of the Agreement-Water made available at the Point of Delivery prior to such termination; for Seller’s administrative expenses in accordance with Paragraph 17.a; for any litigation expenses in having the proceeding dismissed or otherwise resolved; and for Buyer’s take or pay obligation under Paragraphs 6.c and 7.d. If

Initials: _____

Seller so elects to terminate the Agreement, Buyer shall still be obligated to pay for all of the Agreement-Water made available at the Point of Delivery prior to such termination; for Seller's administrative expenses in accordance with Paragraph 17.a; and for any litigation expenses in having the proceeding dismissed or otherwise resolved; but Buyer shall not be obligated to pay for the Buyer's take or pay obligation under Paragraphs 6.c and 7.d for all Agreement-Water that has not yet been made available as of the date of such termination. Regardless of whether the agreement is terminated, and except as set forth in subsections 17.b.ii. and 17.b.iii, below, if litigation is pending, Buyer shall have primary responsibility for defending against such litigation on behalf of both Buyer and Seller, either as a defendant, respondent, real party in interest or intervenor; and Seller shall participate in defending against such litigation to the extent it deems necessary or appropriate, in Seller's sole discretion. Buyer shall bear its own costs of litigation and shall pay any monetary award, the costs of any remedial actions, and any award of challenger's attorneys' fees associated therewith, whether levied against Buyer or Seller. Buyer shall also reimburse 100% of Seller's actual out-of-pocket expenses Seller incurs for defending this Agreement and against any related litigation under this Paragraph 17.b.i.

- ii. As to claims solely challenging Seller's conduct in Seller's service area, Seller shall have primary responsibility for defending such claims on behalf of both Seller and Buyer, and Buyer shall participate in defending against such claims to the extent it deems necessary or appropriate, in Buyer's sole discretion. Buyer shall bear its own fees and costs of defending against such claims. Except as provided in Paragraph 17.a regarding general cost reimbursement, Seller shall bear its own fees and costs of defending against such claims. Seller shall pay all monetary awards associated with claims challenging Seller's conduct in Seller's service area.
- iii. To the extent litigation includes multiple claims, the Parties agree to meet and confer in good faith to determine whether or not the action includes claims described under Paragraphs 17.b.i and 17.b.ii. The Parties agree that any claim identified as subject to Paragraph 17.b.ii shall be defended as provided in Paragraph 17.b.ii and the balance of such claims shall be defended as provided in Paragraph 17.b.i.

18. **WATER RIGHTS:** The Agreement-Water transferred under this Agreement is a portion of the surface water available to Seller, and diverted in accordance with Seller's Sacramento River Settlement Contract. Consistent with the provisions of California Water Code Sections 109, 475, 1011, 1244, and 11961, the water transfer performed under this Agreement shall not confer any appropriative, public trust or other right to water on any person or entity. Nothing in this Agreement shall act as forfeiture, diminution, or impairment of any rights of Seller to its full diversion of water after the expiration of the Agreement, and this Agreement shall in no way prejudice any of Seller's rights thereto. The Parties agree that the water transferred under this Agreement is considered a beneficial use of water under California law.

Initials: _____

19. BUYER'S PAYMENT OF RECLAMATION'S COSTS, RATES, AND CHARGES:

Buyer shall be responsible for payment of all costs incurred by Reclamation, and imposed upon Seller, for Reclamation's review, approval, implementation, and administration of this Agreement and the Approval Agreement, as set forth in a separate Letter Agreement between Buyer and Reclamation. Seller will be responsible for the payment directly to Reclamation of contract rates for any Agreement-Water made available from CVP water ("**Project Water**") under the terms of the Approval Agreement and the Letter Agreement. Buyer shall be responsible for any and all incremental costs, rates, charges and assessments that Reclamation imposes upon Seller for conveyance of Project Water to Buyer under the terms of the Approval Agreement and the Letter Agreement.

20. BUYER'S PAYMENT OF DWR'S COSTS, RATES, AND CHARGES:

Buyer shall be responsible for payment of all costs incurred by DWR, and imposed upon Seller, for DWR's review, approval, implementation, and administration of this Agreement and any DWR Conveyance Agreement. Buyer shall be responsible for any and all costs, rates, charges and assessments that DWR imposes upon Seller for conveyance of Agreement-Water under the terms of any DWR Conveyance Agreement.

21. 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.

22. WAIVER OF RIGHTS: Any waiver, at any time, by a 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.

23. ASSIGNMENT: This Agreement is entered into in reliance on water supplies available to Seller, the credit of Buyer, and the need of Buyer's Transfer Participants for water, and therefore any assignment of this Agreement in whole or in part without the prior written consent of the other Party hereto is prohibited.

24. 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 on behalf of the Seller and Buyer by such officers as they may, from time, authorize in writing to so act.

- a. Any notices to Parties required by this Agreement shall be delivered or mailed, United States first-class postage prepaid, by fax or by electronic mail at the following addresses, fax numbers, or electronic mail addresses:

SELLER NAME

_____, General Manager

Address

Phone:

Initials: _____

Fax:
Email:

SAN LUIS & DELTA MENDOTA WATER AUTHORITY

Frances Mizuno, Special Projects Administrator
San Luis & Delta Mendota Water Authority
15990 Kelso Road
Byron, CA 94514
Phone: (209) 832-6200
Fax: (209) 833-1034
Email: frances.mizuno@sldmwa.org

Pablo Arroyave, Chief Operating Officer
San Luis & Delta Mendota Water Authority
15990 Kelso Road
Byron, CA 94514
Phone: (209) 832-6200
Fax: (209) 833-1034
Email: pablo.arroyave@sldmwa.org

- b. 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 or electronic mail, 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.

25. **APPROVALS:** Where the terms of this Agreement provide for action to be based upon a judgment, approval, review, or determination of either 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.
26. **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, either 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 Party of its election to submit to arbitration, then such arbitrator shall be appointed by the presiding judge of the Superior Court of Merced 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 §1283.05, and successor statutes, permitting expanded discovery proceedings shall be applicable to all disputes which are arbitrated pursuant to this paragraph.

Initials: _____

27. **OTHER AGREEMENTS:** Nothing contained herein restricts the Seller from providing water services and sales to others as authorized by law which do not unreasonably interfere with Seller's obligations hereunder.
28. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Seller and Buyer and supersedes any oral agreement, statement, or promise between them relating to the specific subject matter of this Agreement that is not covered in the Approval Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by both Parties to be effective.
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.
31. **AGREEMENT NOT PRECEDENT:** The Parties acknowledge and agree that nothing in this Agreement shall be considered precedent for any agreements for purchase and sale of water between the Parties in any future year.

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

BUYER: SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____ Date: _____
 Federico Barajas, Executive Director

SELLER:

By: _____ Date: _____
 _____, President/General Manager

Initials: _____

Agreement No. 21-WC-20-####

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

AGREEMENT AMONG THE UNITED STATES,
SACRAMENTO RIVER SETTLEMENT CONTRACTOR,
AND
THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
FOR CONSENT OF THE TRANSFER AND FORBEARANCE OF BASE SUPPLY AND
TRANSFER OF PROJECT WATER IN THE 2021 CONTRACT YEAR

THIS AGREEMENT is made this ____ day of _____, 2021, among the BUREAU OF RECLAMATION, hereinafter "Reclamation", the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, hereinafter "Authority", and the SACRAMENTO RIVER SETTLEMENT CONTRACTOR, hereinafter "Contractor", and is hereby executed pursuant to the following recitals, terms and conditions:

[1st] WHEREAS, the Contractor holds an existing Sacramento River Settlement Contract with Reclamation, Contract No. 14-06-200-####-R-1, dated [Month Day, Year], hereinafter "Settlement Contract", that provides for diversions of Base Supply and Project Water, hereinafter collectively referred to as "Contract Total"; and

[2nd] WHEREAS, the Authority, by Board Resolution, dated [Month Day, Year], authorized the Executive Director or his delegate to negotiate and execute Water Purchase and Forbearance Agreements for the purchase from Sacramento River Settlement Contractors water made available from groundwater substitution; and

[3rd] WHEREAS, the Authority and its participating members, which includes those participating members identified in Exhibit B-D hereto, hereinafter "Participating Authority Members," have previously entered into that certain Long-Term North to South Water Transfer Program Activity Agreement, establishing the terms and conditions under which the Authority acquires supplemental water and the Participating Authority Members share the benefits and obligations of such supplemental water acquisitions; and

[4th] WHEREAS, the Contractor and the Authority have executed an Agreement entitled "Water Purchase and Sale Agreement By and Between Sacramento River Settlement Contractor and The San Luis & Delta-Mendota Water Authority", hereinafter "Purchase Agreement", that provides for the Contractor to forbear and/or transfer a portion of its Contract Total for the subsequent benefit of the Participating Authority Members given certain considerations made by the Authority to the Contractor; and

[5th] WHEREAS, the Contractor and the Authority have requested Reclamation to accept and account for the foregone quantity of Contactor's available Base Supply for 2021 as water available to Reclamation for subsequent delivery under its state water right permits for the Central Valley Project, hereinafter "Project", for delivery as Project Water to Participating Authority Members; and

Commented [A1]: Added. nlw

[6th] WHEREAS, Reclamation is willing to undertake this action and enter into this Agreement in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter “Federal Reclamation law”, and the terms and conditions hereinafter stated;

Commented [A2]: Added. nlw

NOW, THEREFORE, the Parties hereto agree as follows:

1. This Agreement shall become effective upon execution by all of the Parties. Execution will serve as Reclamation’s approval and consent of the proposed transfer, and will remain in effect until December 31, 2021; *Provided*, that any performance obligations pursuant to Articles 9 and 14 of this Agreement shall survive the expiration date of this Agreement and continue until all obligations are completed. The Parties recognize and agree that the forborne portion of the Contractor’s Contract Total for 2021 will be made available for subsequent delivery by Reclamation to Participating Authority Members, consistent with the terms of this Agreement.

2. The Contractor proposes to forbear and/or transfer up to #### acre-feet of its available Contract Total, which the Contractor would have otherwise beneficially used on the lands depicted on Exhibit B of the Settlement Contract. The Contractor’s anticipated monthly forbearance/transfer schedule for 2021 is provided in Exhibit A of this Agreement. Quantities in Exhibit A may be increased or decreased by Reclamation, without further amendment hereof so long as the quantity of water proposed to forbear/transfer does not exceed #### acre-feet.

(a) Any groundwater wells used by the Contractor pursuant to this Agreement shall be approved in advance by Reclamation and listed in Exhibit ~~C~~B of this Agreement, which may be updated by Reclamation without further amendment hereof.

(b) The Contractor’s anticipated monthly transfer schedule of water made available from groundwater pumping actions is provided in Table 2 of Exhibit A, which may be updated by Reclamation without further amendment hereof.

(c) The Contractor’s anticipated monthly transfer schedule of water made available from crop idling/crop shifting actions is provided in Table 3 of Exhibit A, which may be updated by Reclamation without further amendment hereof.

Commented [A3]: Added. nlw

3. (a) Prior to the delivery of any forborne/transfer water by Reclamation to the Participating Authority Members, the Contractor shall provide Reclamation with all necessary documentation to satisfy the requirements of the Draft Technical Information for Preparing Water Transfer Proposals, dated December 2019, hereinafter “Water Transfer White Paper”; the Interim Guidelines for Implementation of Water Transfers, dated February 25, 1993; the Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report, hereinafter “EIS-EIR”; and, the Record of Decision for the Long-Term Water Transfers. Reclamation, in coordination with the State of California’s Department of Water Resources,

Commented [A4]: Added. nlw

hereinafter “DWR”, shall evaluate the Contractor’s documentation to ensure it will not result in injury to other legally authorized users of water.

(b) Reclamation, in coordination with ~~the State of California’s Department of Water Resources, hereinafter “DWR”~~, shall evaluate the Contractor’s documentation to ensure it will not result in injury to other legally authorized users of water. If it is determined, after review of the documentation, and subsequent field reviews, required for crop shifting/crop idling transfers, and review of well records, required for groundwater substitution transfers, that the Contractor has not complied with all requirements to make water available for transfer, then Reclamation will not approve the transfer or a portion of the transfer.

Commented [A5]: Added. nlw

4. The Contractor’s forbearance/transfer of a portion of its Contract Total for 2021 is limited to the period April 1, 2021 through September 30, 2021. The forborne/transferred water shall be scheduled by the Contractor and approved by Reclamation pursuant to Article 2 of this Agreement. If the total diversions by the Contractor plus the forborne Base Supply and/or Project Water transferred and any other transfers by the Contractor exceed the Contract Total in Exhibit A of the Settlement Contract, ~~as may be reduced in accordance with Article 5(a) of the Settlement Contract~~, then the quantity of forborne Base Supply and/or transferred Project Water available to the Participating Authority Members shall be reduced by Reclamation by that exceeded amount.

Commented [A6]: Added. nlw

5. For groundwater substitution transfers, the Contractor shall implement a monitoring plan as outlined in the Water Transfer White Paper and as required in the Monitoring and Mitigation Reporting Plan in the EIS-EIR. The monitoring plan and any updates shall be submitted by the Contractor to Reclamation for approval and, once approved, be attached as Exhibit C to this Agreement, which may be updated without further amendment hereof.

6. The Contractor’s act of forbearance shall be done in a manner that allows Reclamation to accrue control of the forborne water at the Contractor’s point of diversion identified in the Settlement Contract, with subsequent conveyance through the Sacramento-San Joaquin River Delta, hereinafter “Delta”, for delivery to the Participating Authority Members.

7. Contingent upon regulatory approval, no earlier than November 30, 2021, Reclamation may determine, at its sole discretion and without liability to any other party, that any forborne water that was eligible for replacement with a like amount of Project water, but unable to be pumped due to unfavorable conditions in the Delta or other operational considerations as determined by Reclamation or cannot be stored in Shasta Reservoir, is no longer available to Participating Authority Members and is available to Reclamation for other Project purposes. Reclamation will use its best efforts to avoid making that determination and will only make that determination if it concludes that delivery of the water to Participating Authority Members would unreasonably interfere with Reclamation’s operation of the Project for Project purposes or obligations under law. Project Use Energy will be used for pumping of the forborne water or the like amount of Project Water Reclamation makes available.

8. Reclamation will, to the extent practicable, operate the Project to facilitate the delivery of water made available under this Agreement to the Participating Authority Members. During balanced conditions in the Delta, as defined in the Agreement Between The United States of

America and the State of California for Coordinated Operation of the Central Valley Project and State Water Project, the water under this Agreement will be diverted and/or pumped at the C.W. “Bill” Jones Pumping Plant or the state owned and operated Harvey O. Banks Pumping Plant. When pumping capacity is not available at either facility or when unfavorable operational conditions in the Delta do not allow pumping of water under this Agreement, Reclamation may cause the water to be dedicated for other Project purposes, and, subject to subsequent pumping capacity and favorable operational conditions in the Delta, will make available a like amount of Project Water for delivery to the Participating Authority Members; *Provided*, That for any water made available under this Agreement by the Contractor prior to July 1, Reclamation may determine, at its sole discretion and without liability to any other party, that it is unable to use the water for other Project purposes and thus unable to provide a like amount of Project Water. If this condition arises, Reclamation shall provide notice to the other Parties immediately.

9. The total quantity of forborne Base Supply and/or transferred Project Water initially delivered to the Participating Authority Members under this Agreement will be reduced by approximately XX percent to account for estimated Delta carriage losses, as determined by Reclamation, in coordination with DWR. The carriage losses percentage will vary based on Delta conditions during the transfer period. The final Delta carriage loss percentage will be established at the conclusion of the transfer period and the quantity of forborne/~~transfer~~ water available for delivery to Participating Authority Members will be trued-up after a final carriage loss percentage is established.

10. The Authority agrees to reimburse Reclamation for all costs incurred related to the administration and implementation of this Agreement. Reclamation and the Authority have entered into a separate Letter of Agreement, Agreement No. 21-WC-20-5782, for reimbursement of those costs.

Commented [A7]: Added.

11. (a) The Contractor shall pay to Reclamation the applicable 2021 Rates, Charges and Assessment pursuant to Article 7 of the Settlement Contract for Project Water transferred. The Project Water transferred will also be subject to the payment of incremental costs identified in Exhibit E, which may be updated by Reclamation without amendment hereof. Exhibit E presents the costs for delivery of Project Water that are incurred under this Agreement in excess of the costs of providing the Project Water to the Contractor pursuant to the Settlement Contract. ~~If the percentage of Project Water transferred added to the amount of Project Water actually diverted and used on lands within the Contractor’s service area exceed 75 percent of the Project Water under the Settlement Contract, then the Contractor will pay to Reclamation the applicable 2020 Rates, Charges and Assessment for each additional acre foot of Project Water above the 75 percent threshold.~~

Commented [A8]: Reclamation has declared a Critical Year, so this is not applicable. nlw

(b) For Base Supply forborne, accrued, and delivered to Participating Authority Members as water made available from the Project, the Participating Authority Members shall pay to Reclamation the applicable 2021 Rates, Charges and Assessment pursuant to their respective Project contracts. The Participating Authority Members will be required to revise their water delivery schedules to reflect the amount of water available pursuant to this Agreement and estimated to be delivered on a monthly basis. Payment by the Participating Authority Members for the water under this Agreement that is accrued and delivered to the Participating Authority Members shall be based on the payment requirements set forth in their

respective Project contracts for Project Water. Reclamation will maintain a detailed accounting of the water available to the Participating Authority Members pursuant to this Agreement.

12. The water made available to the Participating Authority Members pursuant to this Agreement shall be used for irrigation and/or municipal and industrial purposes. Unless otherwise exempt, all irrigation use will be subject to the acreage limitation provisions of Federal Reclamation Law, if applicable. If required, landholder forms, from those landholders putting the transferred Project Water to beneficial use, will be required to be on file with the Contractor.

Commented [A9]: Added. nlw

Commented [A10]: Added. nlw

13. The Parties have complied/will comply with their respective, relevant State and Federal environmental laws, policies and guidelines necessary for each party to perform the respective implementation actions including the National Environmental Policy Act and the California Environmental Quality Act.

14. (a) No later than December 30, 2021, the Contractor in coordination with the Authority and Reclamation, shall initiate development of a water transfers summary report by verifying quantities of water made available through method(s) described in this Agreement. A final report shall be due no later than June 1, 2022, and the report shall include, but not limited to, the following:

- i. The respective quantities of Base Supply and Project Water made available pursuant to the method(s) described in the Water Transfer White Paper.
- ii. The actual carriage losses assessed to the foregone Base Supply and transferred Project Water made available for transfer and conveyed through the Delta for delivery to the Participating Authority Members.
- iii. The quantity of water under this Agreement actually delivered to the Participating Authority Members and the month of delivery.
- iv. A detailed description of operational or other circumstances that prevented delivery of water under this Agreement to the Participating Authority Members.
- v. For groundwater substitution transfers, groundwater reporting and monitoring as outlined in Section 3.5.2 of the Water Transfer White Paper.

(b) In the event the report discloses discrepancies between the actual quantity of foregone Base Supply and transferred Project Water and the quantity made available for delivery to the Participating Authority Members, the Parties shall meet and confer to identify each discrepancy and any necessary action(s) to correct such discrepancy. The Parties shall work together to agree to an appropriate consultation process that meets the Parties' needs.

15. (a) To the extent responsibility is otherwise not fully provided for in the Purchase Agreement, the Contractor agrees to be fully responsible for any and all remedies required as a result of any local third-party impacts arising out of this forbearance and/or transfer action.

(b) The United States, its officers, agents and employees, shall not be responsible for the control, care, or distribution of any water under this Agreement after it is released from Project Facilities. It is specifically understood by the Parties that the United States action ends once the water under this Agreement is released from Project facilities, as specifically set forth in this Agreement.

(c) The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor or the Authority from any obligations under this Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

(d) No Member of or Delegate to the Congress, Resident Commissioner, or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

16. Reclamation shall give 10 days advance written notice to the other parties stating its intention to terminate this Agreement if it determines, within its sole discretion, that performance of this Agreement unreasonably interferes with the ability of Reclamation to meet Project purposes or obligations under law. Upon such written notice, the Parties shall, as soon as practicable, meet and confer in an attempt to resolve the reason for termination. In exercising this termination, Reclamation is not liable to any Party or to any Participating Authority Members identified in Exhibit B-D of this Agreement. If this Agreement is terminated, the Contractor and Authority will pay Reclamation any amounts owed as of the date of termination.

17. The Parties agree that this Agreement is a temporary action that shall not be construed and used as a baseline for any future agreement. The primary objective of this Agreement is to provide a supplemental water supply to the Participating Authority Members during contract year 2021; without causing any harm to the Central Valley Project and State Water Project, or other legal users of water, or causing significant adverse effects to the environment.

~~18. As of the signed date of this Agreement, the Authority and the Contractor acknowledge that there is no expected conveyance capacity through Jones Pumping Plant for the conveyance of water made available through the actions taken by the Contractor. Reclamation commits to inform the Authority and Sellers of any capacity that may become available for the conveyance of water under this Agreement. If such conveyance capacity becomes available, Reclamation, the Authority, and the Contractor will work together to modify all schedules as outlined in the subsequent Appendices of this Agreement.~~

~~19. Any water made available under this Agreement and pumped at Banks Pumping Plant under the Joint Point of Diversion (JPOD) Stage 2, will be done so at the expense of the Authority and Participating Authority Members. The Authority and Participating Authority Members will pay for all costs associated with such conveyance including any charges that would accrue to Reclamation as a result of forborne water being pumped under JPOD. All water pumped under JPOD Stage 2 must comply with the associated Water Quality Response Plan, Fishery Protection Plan, and Water Level Response Plan.~~

20. This Agreement may be signed in two or more counterparts each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

Agreement No. 21-WC-20-####

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA

By: _____
Regional Director, California-Great Basin
Region
Bureau of Reclamation

[SACRAMENTO RIVER SETTLEMENT
CONTRACTOR]

By: _____
President, Board of Directors

SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY

By: _____
Executive Director

EXHIBIT A

TABLE 1

Monthly Transfer Schedule, Acre-Feet
May 2021 through October 2021

	April	May	June	July	August	September	October	Total
Rice Monthly ETAW	0%	15%	22%	24%	24%	15%	0%	100%
Cropland Shifting								
Cropland Idling								
Groundwater Substitution (Net)								
Total								

TABLE 2

Estimated Water Made Available from Groundwater Pumping
From Approved Wells (af)

	May	June	July	August	September	October	Total
Total Pumped							
Baseline							
Gross Pumping							
Depletions @ 13%							
Net Water Made Available							

TABLE 3

Estimated Water Made Available from Crop Idling/Crop Shifting (af)

Field Number	Landowner	Acres	2021			Conserved Water in AF
			Crop	ETAW ¹ Unit CU AF/ac	CU AF	
TOTAL						

Water Savings in
AF

CU = Crop Consumptive Use

¹ ETAW values (acre-foot/acre) from the California Department of Water Resources' "Draft Technical Information for Preparing Water Transfer Proposals," December 2019.

EXHIBIT B

List of Approved Groundwater Wells

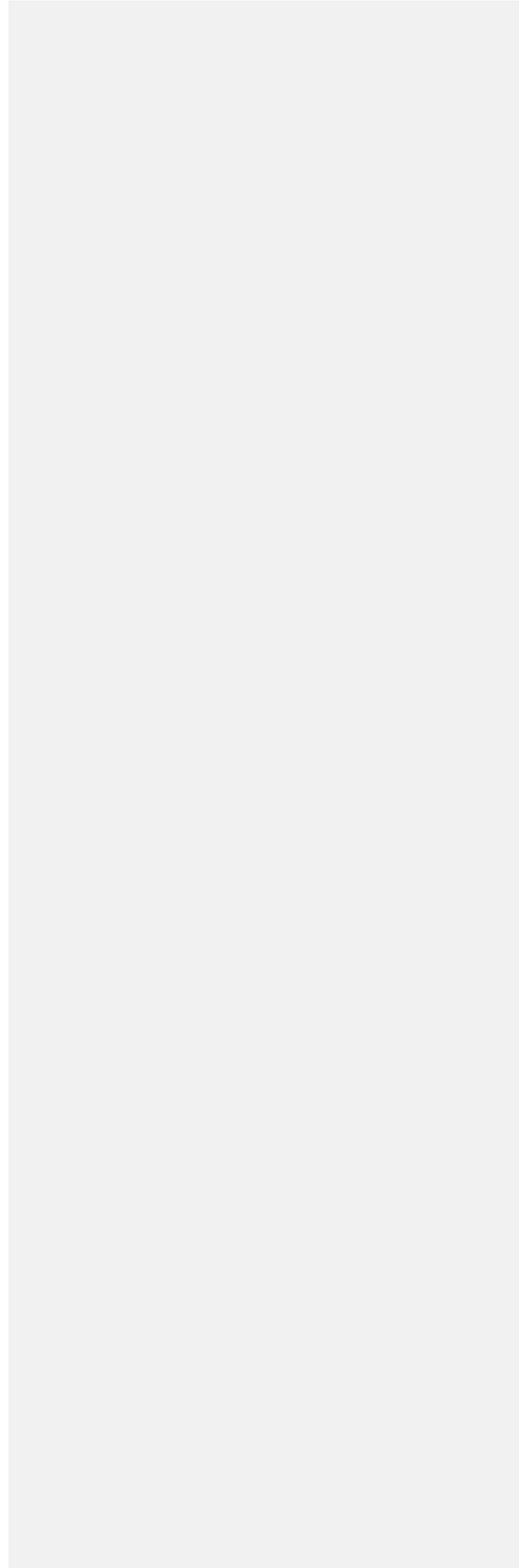


EXHIBIT C

Monitoring Plan – Groundwater Substitution

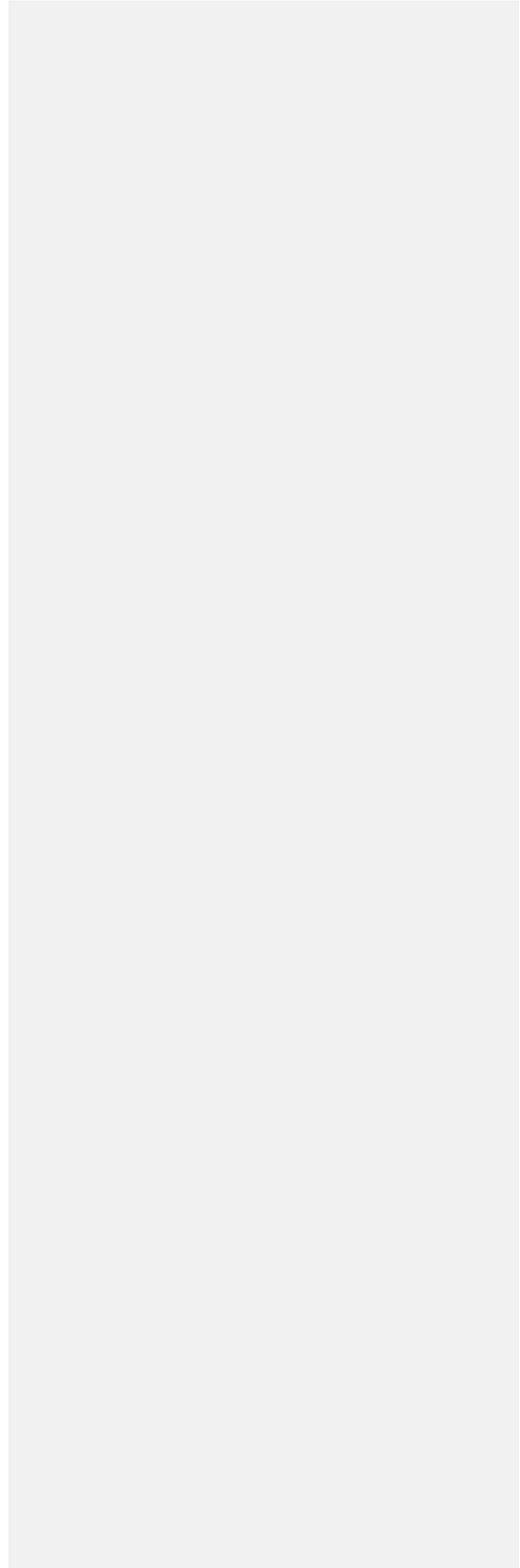


EXHIBIT D

PARTICIPATING AUTHORITY MEMBER CONTRACTORS

CONTRACTOR	CVP CONTRACT NUMBER

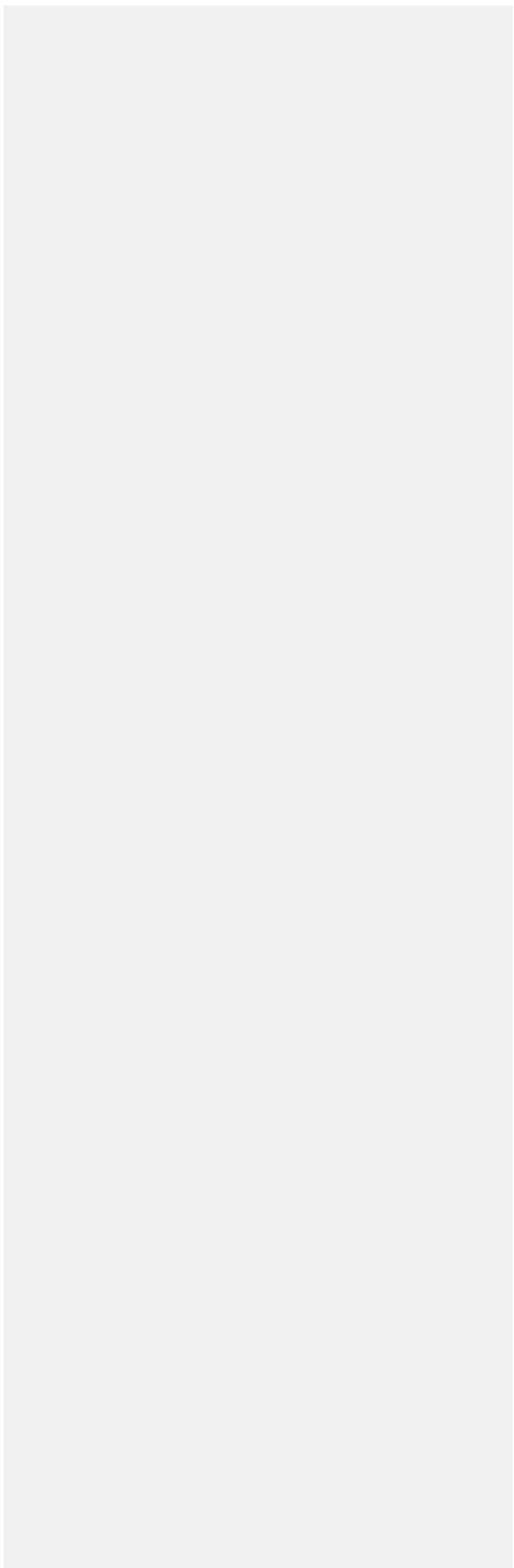


EXHIBIT E
INCREMENTAL COSTS

