



MEMORANDUM

TO: SLDMWA Finance & Administration Committee Members, Alternates
SLDMWA Board Members, Alternates

FROM: Federico Barajas, Executive Director
Rebecca Akroyd, General Counsel

DATE: April 1, 2024

RE: Recommendation, Adoption of Resolution Authorizing Execution of Second Amended and Restated Memorandum of Understanding with Friant Water Authority Relating to Allocation, Collection and Payment of OM&R Costs for Water Delivered Through Certain CVP Facilities, and Authorizing Actions Related Thereto

BACKGROUND

The San Luis & Delta-Mendota Water Authority (Water Authority) and Friant Water Authority (FWA) are parties to the *First Amended and Restated Memorandum of Understanding Relating to Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water Delivered through certain Central Valley Project Facilities* effective as of September 1, 2002 (First Amended MOU).

In 2011, the Water Authority proposed that Friant Division Contractors pay a share of the operational costs of the then new Delta-Mendota Canal-California Aqueduct Intertie on behalf of the Settlement Contractors. FWA objected, and invoked the dispute resolution process under the First Amended MOU. For years thereafter, the dispute was unresolved, and FWA did not pay Intertie-related costs.

More recently, in 2022 and 2023, FWA disputed a number of charges imposed on Friant Division Contractors under the First Amended MOU for other facilities. FWA and the Water Authority invoked the informal dispute resolution process relative to 2022 and 2023 disputed charges and non-payments. During the course of the informal dispute resolution process, on February 1, 2023, FWA requested negotiation of modifications to the First Amended MOU. Beginning in July 2023 and continuing through December 2023, representatives of FWA and the Water Authority met on a monthly basis (with other working group meetings in between) to discuss potential amendments to the First Amended MOU and the resolution of the disputes, including Intertie-related costs.

As a result of the facilitated negotiations, in January 2024 FWA and the Water Authority reached agreement in principle and executed a Memorandum of Agreement that confirmed the general terms of proposed amendments to the First Amended MOU, settlement terms regarding the disputes, and amendments to other Water Authority and FWA governing documents.

One potential consequence of the proposed amendments is to increase the share of OM&R Costs allocated to the United States to deliver water to the refuges. The Memorandum of Agreement includes an agreement by FWA and the Water Authority's agreement to jointly assist the Bureau of Reclamation in seeking additional funds through appropriations to offset those potential cost impacts.

Following execution of the Memorandum of Agreement, FWA and the Water Authority drafted amendments to the First Amended MOU and its four exhibits, which amendments are included in the draft Second Amended and Restated Memorandum of Understanding Between Friant Water Authority and San Luis & Delta-Mendota Water Authority Relating to Allocation, Collection and Payment of Operation, Maintenance and Replacement Costs for Water Delivered Through Certain Central Valley Project Facilities (the "Second Amended MOU") (Attachment 2) being presented to the Board for action.

ISSUE FOR DECISION

Whether to adopt the proposed Resolution Authorizing Execution of Second Amended and Restated Memorandum of Understanding with Friant Water Authority Relating to Allocation, Collection and Payment of OM&R Costs for Water Delivered Through Certain CVP Facilities, and Authorizing Actions Related Thereto.

RECOMMENDATION

Staff recommends adopting the proposed Resolution.

ANALYSIS

Adopting the proposed resolution will authorize execution of the Second Amended MOU, which includes four exhibits: (A) Settlement Contractors, (B) 2024 SLDMWA OM&R Cost Recovery Plan, (C) Reserve Criteria, and (D) Contractor Service (Delivery) Areas.

Although the Second Amended MOU will take effect and be binding upon the Water Authority following its execution, Exhibit B, the "2024 SLDMWA OM&R Cost Recovery Plan," will only take effect following a sixty (60)-day review period by Central Valley Project contractors with payment obligations under Article 12 of the Water Authority's Transfer Agreement, and submittal to the Bureau of Reclamation for review and comment.

Every single page of the First Amended MOU and its exhibits has been modified in some way. To help aid understanding of the proposed changes in the Second Amended MOU, Attachment 4

compares sections of the First Amended MOU and exhibits with sections of the Second Amended MOU and exhibits, and summarizes changes being proposed.

Adopting the proposed resolution would also authorize execution of the proposed letter agreement (Attachment 5), which memorializes FWA and the Water Authority's agreement to jointly assist the U.S. Bureau of Reclamation ("Reclamation") in seeking additional funds through appropriations to offset potential cost impacts associated with increases in OM&R Costs allocated to the United States to deliver water to the refuges. Transmission of the letter agreement would occur following Reclamation's confirmation of the Second Amended MOU and the 2024 SLDMWA OM&R Cost Recovery Plan becoming effective.

Following execution of the Second Amended MOU, Water Authority staff will work with FWA to develop amendments to the Water Authority Joint Powers Agreement and Bylaws for consideration by the Board in future meetings, and to seek an adjustment of OM&R Water Rates once the 2024 SLDMWA OM&R Cost Recovery Plan is effective and confirmed by Reclamation.

BUDGET IMPLICATIONS

Modifying the Cost Recovery Plan methodology will result in changes to OM&R water rates charged to Water Authority member agencies and other CVP contractors that pay OM&R water rates for deliveries in the future. In addition, a new process will be in place to examine cost allocation for large extraordinary operation and maintenance projects in the future, which may result in increased or decreased payment responsibility for individual members.

ATTACHMENTS

1. Proposed Resolution Authorizing Execution of Second Amended and Restated Memorandum of Understanding with Friant Water Authority Relating to Allocation, Collection and Payment of OM&R Costs for Water Delivered Through Certain CVP Facilities, and Authorizing Actions Related Thereto
2. Proposed Second Amended MOU
3. Redlined Second Amended MOU
4. Comparison Between First Amended MOU and Second Amended MOU
5. Proposed Letter Agreement re: Commitment to Assist U.S. Bureau of Reclamation in Seeking Additional Funds through Appropriations to Offset Potential Increases in OM&R Costs for Water Deliveries to Refuges

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2024-__

**RESOLUTION AUTHORIZING EXECUTION OF SECOND AMENDED
AND RESTATED MEMORANDUM OF UNDERSTANDING WITH
FRIANT WATER AUTHORITY RELATING TO ALLOCATION,
COLLECTION AND PAYMENT OF OM&R COSTS FOR WATER
DELIVERED THROUGH CERTAIN CVP FACILITIES, AND
AUTHORIZING ACTIONS RELATED THERETO**

WHEREAS, by Resolution 1998-159 the Board of Directors of the San Luis & Delta-Mendota Water Authority (the “Board” and the “Water Authority,” respectively) authorized execution of that certain Memorandum of Understanding Between Friant Water Users Authority and the Water Authority Relating to Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water Delivered Through Certain Central Valley Project Facilities (the “MOU”); and

WHEREAS, by Resolution 2003-2017 the Board of the Water Authority authorized execution of that certain “First Amended and Restated Memorandum of Understanding Between Friant Water Users Authority and San Luis & Delta-Mendota Water Authority Relating to Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water Delivered Through Certain Central Valley Project Facilities,” (“First Amended MOU”) following amendment of the Agreement for the Transfer of the Operation, Maintenance and Replacement, and Certain Financial and Administrative Activities of the Delta-Mendota Canal and Related Works (the “Transfer Agreement”); and

WHEREAS, in 2004, the Friant Water Users Authority assigned to the Friant Water Authority (“FWA”) all of its right, title, and interest in the Friant Transfer Agreement, and FWA thereafter stood in the shoes of Friant Water Users Authority as it relates to the First Amended MOU; and

WHEREAS, in 2011, the Water Authority proposed that Friant Division Contractors pay a share of the operational costs of the then new Delta-Mendota Canal–California Aqueduct Intertie on behalf of the Settlement Contractors. FWA objected, and invoked the informal dispute resolution process described in the First Amended MOU. More recently, in 2022 and 2023, FWA disputed a number of charges imposed on Friant Division Contractors under the First Amended MOU, and FWA and the Water Authority invoked the informal dispute resolution process relative to 2022 and 2023 disputed charges and non-payments; and

WHEREAS, during the course of the informal dispute resolution process, on February 1, 2023, FWA requested negotiation of modifications to the First Amended MOU; and

WHEREAS, beginning in July 2023 and continuing through December 2023, representatives of FWA and the Water Authority met on a monthly basis (with other working group meetings in between) to discuss potential amendments to the First Amended MOU and the resolution of the disputes; and

WHEREAS, as a result of the facilitated negotiations, in January 2024 FWA and the Water Authority reached agreement in principle and executed a Memorandum of Agreement that confirmed the general terms of proposed amendments to the First Amended MOU, settlement terms regarding the disputes, and amendments to other Water Authority and FWA governing documents; and

WHEREAS, the Memorandum of Agreement includes FWA and the Water Authority’s agreement to jointly assist the U.S. Bureau of Reclamation (“Reclamation”) in seeking additional funds through

appropriations to offset potential cost impacts associated with increases in OM&R Costs allocated to the United States to deliver water to the refuges; and

WHEREAS, following execution of the Memorandum of Agreement, FWA and the Water Authority drafted amendments to the First Amended MOU and its four exhibits, which amendments are included in the draft Second Amended and Restated Memorandum of Understanding Between Friant Water Authority and San Luis & Delta-Mendota Water Authority Relating to Allocation, Collection and Payment of Operation, Maintenance and Replacement Costs for Water Delivered Through Certain Central Valley Project Facilities (the “Second Amended MOU”); and

WHEREAS, the Board has considered that certain form of the Second Amended MOU, Attachment 1 to this Resolution, presented to the Board and on file with the Secretary hereof; and

WHEREAS, authorizing execution of the Second Amended MOU does not legally bind or otherwise commit the Water Authority to operate or maintain Central Valley Project facilities, and further, executing the Second Amended MOU is an administrative and organizational action that will not result in a direct change in the environment or a reasonably foreseeable indirect change to the environment, and thus does not constitute a project subject to CEQA (CEQA Guidelines §§ 15061(b)(3), 15378); and

WHEREAS, authorizing execution of the Second Amended MOU is statutorily exempt from CEQA because it concerns the establishment, modification, structuring, restructuring, or approval of rates or other charges by public agencies which the public agency finds are for the purpose of: (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment, or materials, (3) meeting financial reserve needs and requirements, and (4) obtaining funds for capital projects, necessary to maintain service within existing service areas (CEQA Guidelines § 15273); and

WHEREAS, the Board is willing to authorize execution of the Second Amended MOU, subject to such revisions, additions, and deletions as may be approved by the executing officers at the time of signing the Second Amended MOU, said execution to provide conclusive evidence of such approval.

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. Chair Cannon Michael and Secretary Federico Barajas are hereby authorized and directed to execute the Second Amended MOU for and on behalf of the Water Authority in substantially the form presented to the Board and on file with the Secretary hereof, subject to such revisions, additions, and deletions as may be approved by the executing officers at the time of signing the Second Amended MOU, said execution to provide conclusive evidence of such approval.

Section 3. Executive Director Federico Barajas is further authorized and directed to take all such additional actions, including without limitation, the execution of documents including, but not limited to, a letter agreement memorializing FWA and the Water Authority’s agreement to jointly assist the Bureau of Reclamation in seeking additional funds through appropriations to offset potential cost impacts associated with increases in OM&R Costs allocated to the United States to deliver water to the refuges, as may be necessary or convenient to carry out the intention of this Resolution and the terms of the Second Amended MOU approved hereby.

Section 4. The Second Amended MOU shall take effect and be binding upon the Water Authority following its execution; however, Exhibit B to the Second Amended MOU, the “2024 SLDMWA OM&R Cost Recovery Plan,” will only take effect following a sixty (60)-day review period by all parties with payment obligations under Article 12 of the Water Authority’s Transfer Agreement, and submittal to the Bureau of Reclamation for review and comment.

Section 5. The Second Amended MOU shall remain in full force and effect from year to year, until and unless it is revoked or modified by the Board.

PASSED, APPROVED, AND ADOPTED this __ day of April, 2024, 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 Resolution No. 2024-__ was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at the meeting thereof held on the __ day of April, 2024.

Federico Barajas, Secretary

DRAFT

**SECOND AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING BETWEEN
FRIANT WATER AUTHORITY AND
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
RELATING TO ALLOCATION, COLLECTION, AND PAYMENT OF
OPERATION, MAINTENANCE, AND REPLACEMENT COSTS FOR
WATER DELIVERED THROUGH
CERTAIN CENTRAL VALLEY PROJECT FACILITIES**

This Second Amended and Restated Memorandum of Understanding is made effective as of [DATE], by and among the Friant Water Authority (“FWA”), a joint powers agency of the State of California organized and existing pursuant to Government Code Section 6500, *et seq.* and the San Luis & Delta-Mendota Water Authority (“SLDMWA”), a joint powers agency of the State of California organized and existing pursuant to Government Code Section 6500, *et seq.*, and amends and restates the First Amended and Restated Memorandum of Understanding made and entered into by the parties effective as of September 1, 2002.

DEFINITIONS

As used in this MOU, the following terms have the meanings indicated below. Terms with their initial letters capitalized but not defined below have the same meanings ascribed to them in the FWA Transfer Agreement and the SLDMWA Transfer Agreement.

1. Extraordinary OM&R: Extraordinary OM&R has the same meaning as the non-capitalized term included in the definition of OM&R in the SLDMWA Transfer Agreement. That is, the performance, funding, and financing of emergency or unusual operation and maintenance or extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs to the extent such costs are not considered Capital Improvement costs (as defined in the SLDMWA Transfer Agreement) unless SLDMWA chooses to accomplish and finance such Capital Improvements under Article 5(b) of its Transfer Agreement.
2. Friant Division Contractors: Water Delivery Contractors receiving water service from the Friant Division of the Central Valley Project (“CVP”), including members and non-members of FWA.
3. FWA: Friant Water Authority.
4. FWA Transfer Agreement: That certain Agreement Between the United States of America and Friant Water Authority to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the Friant-Kern Canal and Associated Works effective October 5, 2020, as it may be amended.

5. Memorandum of Understanding or “MOU”: This Second Amended and Restated Memorandum of Understanding.
6. OM&R: Operation, maintenance and replacement as that phrase is defined in the SLDMWA Transfer Agreement.
7. OM&R Budget: SLDMWA’s annual budget to fund the OM&R Program, which is developed and approved in accordance with the procedures set forth in Article 12(a) of the SLDMWA Transfer Agreement.
8. OM&R Costs: Costs of providing OM&R for the Project Facilities pursuant to the SLDMWA Transfer Agreement, including without limitation conveyance pumping costs associated therewith.
9. OM&R Program: All activities of SLDMWA required for the OM&R of the Project Facilities pursuant to the SLDMWA Transfer Agreement, including but not limited to, the program of work to be performed, the preparation and adoption of budgets, funding (including establishment of reserves and creation of debt), purchasing, auditing, inspections, cost recovery methodology, and administrative responsibilities.
10. Party Entitled to Utilize or Receive Other Water: A party required to pay SLDMWA the amounts described in Article 12 of the SLDMWA Transfer Agreement in connection with the delivery of “Other Water,” as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.
11. Project Facilities: The physical works and appurtenances associated with the C.W. “Bill” Jones Pumping Plant (formerly Tracy Pumping Plant), C.W. “Bill” Jones Pumping Plant Operations and Maintenance Complex, Delta-Mendota Canal, Delta-Mendota Canal – California Aqueduct Intertie Pumping Plant (“Intertie”), Kesterson Reservoir, O’Neill Pumping/Generating Plant and Switchyard, the federal share of the O’Neill Forebay, Mendota Pool¹, the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities, and the San Luis Drain; this term includes the facilities defined as the “Project Works” in the SLDMWA Transfer Agreement.

¹ As Mendota Pool is a non-Federal facility, SLDMWA’s operational responsibilities related to Mendota Pool are limited to those activities specifically required to fulfill the legal or contractual obligations of the United States. Unless undertaken pursuant to separate agreements with beneficiaries that will bear the cost, SLDMWA does not conduct additional operation, maintenance, or replacement activities for Mendota Pool.

12. Reserves: Funds accumulated to meet unexpected emergencies or planned multi-year financial commitments of Extraordinary OM&R and/or capital improvement projects to replace or repair Project Facilities and equipment that are not included in the annual costs of ongoing, regular, or routine operations, maintenance, repairs, replacements, and other activities and actions necessary for continued structural integrity and operational reliability of Project Facilities required for the delivery of “Project Water,” as defined in the SLDMWA Transfer Agreement.
13. Settlement Contractors: Those contractors listed in the attached Exhibit A entitled to receive water service through the Project Facilities without charge, except as provided in the OM&R Cost Recovery Plan.
14. Settlement Water: Water the Settlement Contractors are entitled to receive without charge from Project Facilities.
15. SLDM Contractors: Water Delivery Contractors that receive water (other than Settlement Water) via any of the Project Facilities described in the SLDMWA Transfer Agreement.
16. SLDMWA: San Luis & Delta-Mendota Water Authority.
17. SLDMWA Cost Recovery Plan: The cost allocation methodology described in the attached Exhibit B, also referred to as the “Cost Recovery Plan.”
18. SLDMWA Transfer Agreement: That certain Agreement Between the United States of America and San Luis & Delta-Mendota Water Authority to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the San Luis and Delta-Mendota Canals, C.W. “Bill” Jones Pumping Plant, Delta-Mendota Canal/California Aqueduct Intertie Pumping Plant, O’Neill Pumping/Generating Plant, San Luis Drain and Associated Works effective January 14, 2020, as amended.
19. USBR: United States Department of the Interior, Bureau of Reclamation.
20. Water Delivery Contract: (1) Any contract entered into by the Secretary of the United States Department of the Interior under the provisions of Sections 9(c), 9(d), or 9(e) of the Reclamation Project Act of 1939 or Section 3404 of the Central Valley Project Improvement Act pursuant to which “Project Water” is to be supplied from or through Project Facilities and (2) any exchange contract, water rights settlement contract, or similar agreement pursuant to the terms of which water is to be supplied by the United States from or using the Project

Facilities, as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.

21. Water Delivery Contractor: A party holding a Water Delivery Contract with the United States, as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.

RECITALS

1. Since March 1, 1998, the costs of operating, maintaining and replacing certain CVP conveyance facilities and the San Luis Drain, and the costs of conveyance pumping, no longer have been funded by the USBR through federal appropriations and instead are being funded pursuant to those certain agreements to transfer the operation, maintenance and replacement and certain financial and administrative activities (the “Transfer Agreements”) entered into between USBR and (i) SLDMWA, (ii) FWA, and (iii) Madera Irrigation District and Chowchilla Water District, and the October 1, 1996 Transfer Agreement between the USBR and the Tehama-Colusa Water Authority, respectively (referred to as the “Conveyance Contractors”), except that the USBR has entered into, or agreed to enter into, other appropriate legal instruments to fund OM&R Costs for Water Delivery Contractors that have a deficiency, as that term is defined in Article 12(c) of the SLDMWA and FWA Transfer Agreements, in payment to the Conveyance Contractors.

2. The Conveyance Contractors have agreed to the principle that in operating under their respective Transfer Agreements, the Conveyance Contractors will replace the USBR’s historic CVP-wide pooling of costs of operating, maintaining and replacing CVP conveyance facilities with direct funding by each Conveyance Contractor to cover the operation, maintenance, and replacement costs of the facilities assumed by each pursuant to their respective Transfer Agreements.

3. Pursuant to the terms of the SLDMWA Transfer Agreement, the cost of OM&R of CVP conveyance facilities and the San Luis Drain, and the costs of conveyance pumping for water delivered through the Project Facilities will be funded by SLDMWA, and SLDMWA will establish budgets and methods for direct recovery of OM&R Costs of such facilities from the Water Delivery Contractors and Parties Entitled to Receive or Utilize Other Water receiving such water.

4. Because certain deliveries of San Joaquin River water to Friant Division Contractors are dependent upon the delivery of Settlement Water to the Settlement Contractors, those Friant Division Contractors have a critical interest in the OM&R of the Project Facilities and have agreed to pay the OM&R Costs incurred by SLDMWA under the SLDMWA Transfer Agreement associated with the delivery of the Settlement Water as determined in accordance with this MOU.

5. FWA, by virtue of the FWA Transfer Agreement, is willing to apportion among and collect from the Friant Division Contractors the OM&R Costs incurred by SLDMWA in delivering Settlement Water and other types of water that may be agreed to for which FWA is responsible on behalf of the Friant Division Contractors under this MOU and remitting the same to SLDMWA, all in accordance with the terms of this MOU.

AGREEMENT

The parties enter into this MOU based upon the facts and definitions stated above, and for the purposes and upon the terms and conditions set forth below:

I. PURPOSES OF THE MOU

The purposes of this MOU are as follows:

- A. To establish the standards for OM&R of the Project Facilities by SLDMWA, and to set forth certain assurances relating thereto;
- B. To establish the methodology for allocating and recovering OM&R Costs;
- C. To establish the process for remittance by FWA to SLDMWA of payments collected from the Friant Division Contractors for OM&R Costs allocable to the Friant Division Contractors under this MOU;
- D. To establish the principles for and rights of participation in decision-making by FWA in the OM&R Program, which includes providing input, and as applicable voting, on cost allocation, collection and payment procedures, and budgeting;
- E. To establish the process of resolution of any disputes that may arise in the implementation of this MOU; and
- F. To establish the conditions or events which would trigger renegotiation and/or renegotiation of this MOU.

II. STANDARD FOR OM&R OF THE PROJECT FACILITIES

The OM&R Program will comply with the standards set forth in the SLDMWA Transfer Agreement; provided, that the OM&R Costs may not exceed those which are reasonably necessary to OM&R the Project Facilities in accordance with such standards. The parties mutually acknowledge that there are items of deferred maintenance which must be performed on the Project Facilities in order for the OM&R Program to meet the applicable standards, and nothing in this paragraph is intended to preclude the performance of those deferred maintenance items or the equitable development of reserves in accordance with this MOU which will permit the OM&R of the Project Facilities in the future in accordance with the SLDMWA Transfer Agreement.

III. DEVELOPMENT OF COST RECOVERY METHODOLOGY

A. Cost Recovery Methodology for OM&R Costs

1. Principles of Cost Allocation. The OM&R Costs in which FWA will share will be allocated to OM&R activities in accordance with (i) generally accepted accounting principles and (ii) the SLDMWA Cost Recovery Plan, which will be applied consistently for all OM&R activities of SLDMWA. To the extent the allocation of the costs for specific acquisitions or OM&R activities is not addressed by the SLDMWA Cost Recovery Plan, such costs will be allocated in a manner consistent with the following principles, also contained in the SLDMWA Cost Recovery Plan:

a) Except where expressly noted otherwise, Friant Division Contractors are responsible for paying OM&R Costs for Project Facilities used for the delivery of Settlement Water to the Settlement Contractors in accordance with the terms of this MOU;

b) Water rates will be comprised of various cost pool components based on the principle that OM&R Costs are allocated to water deliveries based on the Project Facilities used for such deliveries; and

c) All Water Delivery Contractors and Friant Division Contractors have a critical interest in the effective and efficient OM&R of the Project Facilities.

If the actual use of Project Facilities, including any subsequently acquired property or facilities, proves to be materially different from the use that is anticipated, appropriate adjustments will be made in order to more accurately reflect an appropriate allocation of OM&R Costs.

2. Reserves. Reserves for Extraordinary OM&R, capital replacement, emergencies, and other appropriate purposes will be established in accordance with the SLDMWA Transfer Agreement and the SLDMWA Cost Plan. Only items meeting the criteria attached hereto as Exhibit C ("Reserve Criteria") will constitute Reserves in which FWA must participate for purposes of this MOU.

3. Disbursements of Interest or Reserves. While it is anticipated that all amounts paid by FWA to SLDMWA under this MOU and any associated interest earnings will be retained by SLDMWA and utilized to support the OM&R Program, in the event of any distributions of interest or of Reserves, such distributions will be made to the parties providing the funds being distributed or the funds on which the interest to be distributed was earned, including FWA.

4. Miscellaneous Revenues. The parties anticipate that SLDMWA may from time to time realize miscellaneous revenues from sources directly related to the OM&R Program, including without limitation revenues from (i) rebates from vendors of products and/or services used in the OM&R Program, (ii) the sale of used equipment originally acquired for use in the OM&R Program, and (iii) amounts collected from third parties for whom SLDMWA performs contract services using employees, equipment and/or materials otherwise used in the OM&R

Program. All such miscellaneous revenues will be retained by SLDMWA and utilized to support the continued OM&R Program, as an offset to budgeted OM&R Costs that would have been allocated to Friant Division and SLDM Contractors.

IV. ALLOCATION, COLLECTION, AND REMITTANCE OF COSTS BY FWA

A. Recovery from Friant Division Contractors

FWA will, as a part of the FWA cost recovery methodology developed under the FWA Transfer Agreement, provide for the recovery of OM&R Costs allocated to Settlement Contractors under the SLDMWA Cost Recovery Plan, which OM&R Costs are to be paid by Friant Division Contractors. To the extent the USBR has conferred upon FWA the legal authority to do so, FWA will allocate such costs among, and collect such costs from, the Friant Division Contractors, and will promptly remit such costs to SLDMWA.

B. Remedies for Non-Payment or Delinquent Payment

In the event of any non-payment or delinquent payment to FWA by a Friant Division Contractor of amounts to be collected by FWA and remitted to SLDMWA under this MOU, FWA will diligently exercise its available remedies, (whether under Article 12 of the FWA Transfer Agreement, or under California law), in a manner FWA reasonably believes is most likely to result in the prompt collection and remittance of such amounts to SLDMWA. If FWA is unable to collect and remit any amount owing from the delinquent Friant Division Contractor before the last day of the month before the scheduled month of delivery (whether from such Friant Division Contractor or from the USBR via offset or direct payment), or if FWA fails to promptly remit to SLDMWA all amounts received from any Friant Division Contractor, the USBR will be deemed to have directed SLDMWA to deliver or convey Settlement Water despite a delinquency under Article 12 of the SLDMWA Transfer Agreement, and the United States will be liable to SLDMWA for the costs to be recovered on account of such Settlement Water under this Agreement; provided, that FWA will also continue to diligently exercise its available remedies in the manner FWA reasonably believes is most likely to result in the prompt collection and remittance of such amounts to SLDMWA. Nothing contained in this MOU authorizes SLDMWA to terminate Settlement Contractor deliveries in the event of delinquencies in payment by the Friant Division Contractors.

V. FWA INPUT AND PARTICIPATION IN SLDMWA OM&R ACTIVITIES

A. FWA Participation

FWA will participate in SLDMWA decision-making relating to the OM&R of the Project Facilities and the OM&R Program through representation and voting on the SLDMWA Board of Directors, Finance and Administration Committee, OM&R Technical Subcommittee, and the Planning Committee.

1. Board of Directors. FWA will be entitled to representation on the SLDMWA Board of Directors, in that the FWA representative may vote on any action item

funded, in whole or in part, from any OM&R fund or Reserves to which Friant Division Contractors have or will have contributed.

2. Finance and Administration Committee. FWA will be entitled to one of eight positions on the Finance and Administration Committee (“FAC”), with the right to vote on all OM&R budgetary matters. The FAC is an advisory committee to the Board of Directors. A recommendation of the FAC to the Board of Directors to adopt or amend the OM&R Budget will be adopted by the “yes” vote of at least 5 of 8 members. The FWA representative and an alternate will be selected by FWA. The FWA alternate representative will participate and may cast the vote of FWA in the absence of the FWA representative, or in case such representative is barred from voting due to conflict of interest.

3. OM&R Technical Committee. FWA will be entitled to one of ten positions on the OM&R Technical Committee, with the right to vote on all matters. The OM&R Technical Committee is a subcommittee of the FAC and is advisory to the FAC and the Board of Directors. As long as this MOU is in effect, the OM&R Technical Committee will be comprised of the following members, with no Water Delivery Contractor entitled to have more than one representative on such committee at any time:

Contractors served from the Mendota Pool	1
Contractors served from the Lower DMC	1
Contractors served from the Upper DMC	1
Contractors served from the San Luis Canal (1 from Westlands + 1 from others)	2
Contractors served from the San Felipe Division	1
Exchange Contractors	1
FWA	1
USBR	1
SLDMWA Technical Staff	1

One alternate will be appointed for each such representative, and each such alternate will participate and cast the vote of the represented party in the absence of such party’s representative or in case the representative is barred from voting due to conflict of interest.

The SLDM and Settlement Contractors in each of the above-referenced service areas are listed in the attached Exhibit D.

A recommendation of the OM&R Technical Committee to the FAC to adopt or amend OM&R Budget levels will be adopted by the “yes” vote of at least 8 of 10 members. At any point in the budget approval process, a budget or a budgetary issue may be remanded back to the OM&R Technical Committee, which will diligently meet to reconsider the matter and provide its recommendation.

4. Planning Committee. The Planning Committee is a subcommittee of the FAC and is advisory to the FAC and the Board of Directors.

a) FWA will be entitled to one of six voting positions on the Planning Committee, with the right to vote on all matters. As long as this MOU is in effect, the Planning Committee will be comprised of the following members, with no Water Delivery Contractor entitled to have more than one representative on such committee at any time:

SLDMWA Division 1	1
SLDMWA Division 2	1
SLDMWA Division 3	1
SLDMWA Division 4	1
SLDMWA Division 5	1
FWA	1

One alternate will be appointed for each such representative, and each such alternate will participate and cast the vote of the represented party in the absence of such party's representative or in case the representative is barred from voting due to conflict of interest.

b) In addition, the Planning Committee will include five non-voting members:

SLDMWA staff/consultant representative	1
FWA staff/consultant representative	1
USBR representative	1
SLDMWA technical representative	1
FWA technical representative	1

The non-voting members will not count in the calculation of a quorum.

c) The Planning Committee will review, evaluate, and establish a recommendation for the allocation of costs of any Extraordinary OM&R project for which SLDMWA's estimated total project cost is greater than 50% of the current year's routine OM&R Budget, excluding power and Reserves costs. The Planning Committee's cost allocation recommendation will be informed by preparation of a beneficiary analysis that will provide supply benefits broken down by water service type and contractor. The anticipated benefits to be analyzed will be comprised of two components: 1) attributable water supply direct benefits (water entitlements and priority of service), including increases in water deliveries due to an Extraordinary OM&R project, and 2) system-wide indirect benefits, including economic considerations.

d) The Planning Committee should be involved in review of a potential Extraordinary OM&R project as early as possible in order to make a cost allocation recommendation so that prudent and cost-effective decisions related to the proposed Extraordinary OM&R project can be made on a timely basis. As the owner of the Project Facilities, USBR will be consulted on proposed Extraordinary OM&R projects involving such Facilities given its independent role in developing project feasibility studies and environmental documents.

e) Initial cost allocation recommendations from the Planning Committee require a unanimous vote by all members present. If, after exploring various solutions to achieve unanimity, members who represent agencies that are not proposed to be allocated the Extraordinary OM&R project costs continue to object to the proposed findings or recommendation, such members' objection will not preclude a recommendation moving forward from the Planning Committee provided that all remaining members of the committee representing agencies that will be allocated Extraordinary OM&R project costs unanimously approve the findings and recommendation.

f) Once a recommendation on cost allocation has been made by the Planning Committee, the recommendation will be forwarded to the FAC for its consideration and/or possible recommendation to the SLDMWA Board of Directors. If the FAC proposes any "material change"² to the Planning Committee recommendation, the proposed material change, including a summary of the reasons for the change(s), must be referred back to the Planning Committee for review.

g) Upon receipt of a proposed material change to an initial recommendation, the Planning Committee can 1) concur in the FAC's proposed material change, 2) unanimously support revisions to the material change (including reasons why the Planning Committee recommendation is preferable to the FAC-proposed material change), or, 3) if unanimous support or revisions cannot be agreed to, the original Planning Committee recommendation will stand, and the Planning Committee recommendation will be sent, along with the separate FAC recommendation, to the SLDMWA Board of Directors for action.

h) The Planning Committee's review of and response to the FAC-proposed material change(s) must occur within thirty (30) days of any referral from the FAC, unless the FAC agrees to a longer review and response period.

i) Initial cost allocations related to an Extraordinary OM&R project that the Planning Committee has reviewed will be periodically reviewed by the Planning Committee, FAC, and/or SLDMWA Board of Directors to determine if changes in allocated costs are warranted.

5. SLDMWA Committee Structure. All matters pertaining to the OM&R Budget and the OM&R Program will be addressed by the FAC, OM&R Technical Committee, and/or Planning Committee, for matters within their respective jurisdiction. SLDMWA will not alter that delegation of responsibility or the structure/composition of the committees or subcommittees while this MOU is in effect without the consent of FWA; provided, that FWA will not withhold such consent in the event SLDMWA wishes to form new committees or subcommittees to deal with OM&R budgetary and/or OM&R Program matters if FWA is entitled to participate on such committees or subcommittees by representation and with voting rights that are equivalent to the rights described in this MOU. Reorganizations of committee

² For the purposes of this Section V.A.4, a "material change" is one that would increase the overall costs of the Extraordinary OM&R project by more than 10% based on the engineer's estimate, or increase the project costs allocated to any participating OM&R payor by more than 10%.

structure that do not affect FWA participation on OM&R budgetary and/or OM&R Program matters, such as splitting off administrative matters or other non-OM&R budgets, will not be affected by the terms of this MOU.

B. Provision of Information

SLDMWA will share with FWA in a timely manner all relevant information available regarding SLDMWA OM&R Budgets; actual OM&R Costs incurred, including but not limited to power costs; water deliveries; and all similar information that affects the OM&R Budget, the OM&R Program, the SLDMWA Cost Recovery Plan, and adjusting estimated costs to actual. All such information will be provided to FWA at the same time it is provided to all other members of the Board of Directors or members of any committee or subcommittee as part of a regular or special meeting, and if a separate request for information is made by FWA representatives outside of any board, committee or subcommittee meeting, such information will be provided as soon as reasonably practical.

1. Reports. SLDMWA will provide such information by means of its draft and final budgets and any budget addenda on OM&R; monthly Financial Report, including budget-to-actual expenditures; USBR and/or SLDMWA Water Delivery Reports; and such other reports as may be developed for such purposes from time to time.

2. Access. FWA will be afforded access to inspect SLDMWA records on the same terms as are provided to the USBR pursuant to Article 15(a) of the SLDMWA Transfer Agreement.

C. Notices and Meeting Dates

SLDMWA will give FWA, its designated representatives and the designated alternate for each timely notice of all meetings of the Board of Directors, FAC, OM&R Technical Committee, and Planning Committee. All information and notices provided to FWA by SLDMWA will be provided in the same detail, and at the same time, as the information and notices provided to SLDMWA members or their representatives participating in the same decision-making. To facilitate FWA participation as described herein, SLDMWA will use its best efforts to establish regular meeting dates for meetings of the Board of Directors, committees, and subcommittees that deal with the OM&R Program or any OM&R-related issue on dates that do not conflict with regularly-scheduled FWA meeting dates, to coordinate meeting dates for special meetings of such committees or subcommittees with the schedules of FWA representatives, and to permit FWA to participate by telephone or other electronic means, and FWA will use best efforts to make its representatives available for such participation.

VI. RESOLUTION OF DISPUTES

A. Process

Disputes relating to interpretation or performance of this MOU will be resolved according to the process described in this Article.

1. Informal Dispute Resolution. Should any dispute arise between SLDMWA and FWA concerning any matter that is the subject of this MOU, the party raising the disputed issue must promptly give written notice (“Dispute Notice”) to the other party. The Dispute Notice must contain the date or general period the dispute arose, a detailed explanation of the issue (including proposed resolution of the issue), and the name and contact information of the disputing party's representative who should be contacted by the responding party. The parties must schedule and participate in an initial meeting no later than thirty (30) days from the date of the Dispute Notice, and if the issue is not resolved at the initial meeting, the parties must thereafter continue to engage in good faith efforts to resolve the issue at the earliest opportunity. Each party must make available, at such party's expense, such policy-level staff members, technical staff, consultants, or Board members as are reasonably necessary to the equitable and expedient resolution of the issue. At any time during this process, either party may request that the Regional Director of the USBR participate in the process to facilitate the resolution, and the other party will accept such participation if it is provided. In the event the parties have not reached agreement on resolution of the disputed issue within ninety (90) days of the date of the Dispute Notice, or such extended period as the parties may mutually agree to, either party may pursue the remedies described in Section VI.A.2 or 3, as applicable.

2. Alternative Dispute Resolution. At any time during the informal dispute resolution process described in Section VI.A.1 above, or following the expiration of the time period established for such process, either party may propose a form of alternative dispute resolution (“ADR”) such as mediation or arbitration to resolve the dispute. The utilization of such voluntary ADR process will require mutual agreement as to the specifics of the process, and the decision as to whether to utilize such voluntary ADR process in the first place and the details of such process will be at the sole discretion of the parties. The parties will endeavor, where applicable, to select a mediator or arbitrator with general familiarity with the OM&R of water conveyance facilities and the CVP. The decision by any party not to utilize ADR or the inability to agree upon the specifics of an ADR process will not constitute bad faith under this MOU.

3. Resolution by USBR. In the event the parties have not reached agreement on resolution of the dispute through informal dispute resolution within the time period described in Section VI.A.1., with or without the assistance of the Regional Director as facilitator, or through the voluntary utilization of ADR under Section VI.A.2, then the dispute will be determined by the Regional Director using the following procedure:

a) Within fifteen (15) days after the expiration of the period for informal dispute resolution and after the termination of any ADR proceedings, the parties will request in writing a determination of the dispute by the Regional Director (“Request for Dispute Determination”).

b) Upon receipt of a Request for Dispute Determination, the Regional Director, with non-binding input from the parties, will select a panel of USBR personnel (“Panel”) with appropriate financial, operational, policy, or technical backgrounds to assist in the resolution of the dispute.

c) The Regional Director, in coordination with the parties, will set dates for the submission of position papers on the dispute (including page limitations) and for the parties to present their positions to the Regional Director and the Panel. Unless the parties agree otherwise, the meeting at which the parties present their positions must take place within sixty (60) days of the date of submission of the Request for Dispute Determination.

d) Within sixty (60) days of the meeting at which the parties present their positions, or such other reasonable date as may be agreed upon by the parties and USBR, the Panel will prepare an analysis and recommendation on the dispute and the Regional Director, upon review of such recommendation and following an opportunity to request any additional information or to have any additional meetings with the parties, will issue a final written decision on the dispute. Nothing in this MOU is intended to or will limit the discretion of the Regional Director to apply applicable Reclamation law, policies, or procedures, where appropriate, in resolving any disputes submitted by the parties under this Section VI.A.3.

e) The Regional Director's determination will constitute a final written determination of the Contracting Officer pursuant to Article 10 of the parties' existing Transfer Agreements, and the parties must promptly comply with the determination until the same is stayed, reversed, or modified by a decision of a court of competent jurisdiction. Any challenge to the Regional Director's determination must be filed in federal court within sixty (60) days thereafter, and such determination will be subject to judicial review under the applicable standards of the federal Administrative Procedure Act (5 U.S.C. § 706). Except as set forth in Section VI.B, if the Regional Director's determination results in a payment obligation to either party, any such payment need not be made prior to the final resolution of any judicial proceedings commenced in accordance with this subsection.

f) If the Regional Director's determination under Section VI.A.3.e results in a payment obligation to either party, and an appeal is not timely filed in federal court, the following provisions will apply:

1. If the Regional Director determines FWA owes payment to SLDMWA under the MOU, FWA must promptly pay the sums owed to SLDMWA, and until paid any such amounts will accrue interest at the same rate SLDMWA charges contractors for delinquent payments under this MOU. After sixty (60) days from the Regional Director's final decision, any unpaid amounts will be deemed a "deficiency" within the meaning of Article 12 of the SLDMWA Transfer Agreement.

2. If the Regional Director determines SLDMWA owes payment to FWA under the MOU, SLDMWA must promptly pay the sums owed to FWA, and until paid any such amounts will accrue interest at the same rate SLDMWA charges contractors for delinquent payments under this MOU. If after sixty (60) days from the Regional Director's final decision SLDMWA has not paid the sums owed FWA, then FWA may apply the total obligation as a credit towards any pending or future cost invoice to FWA until the obligation is fully offset.

g) The parties agree to share equally any costs imposed by USBR associated with the participation of the Regional Director and Panel personnel in the dispute resolution process under this Section VI.A.3.

B. Disputes Causing Cash Flow Difficulties

The parties recognize that circumstances could arise in which the non-payment of amounts due by one party could create material cash flow difficulties for the other party. In the event a dispute results in the non-payment of obligations owed to SLDMWA by FWA or a demand from FWA for payment by SLDMWA at such time or in such amount that the other party becomes unable to reasonably meet its cash flow needs, the affected party will not be obligated to pursue informal dispute resolution or ADR for a period of longer than ten (10) days, after which time the party will be entitled to issue a Request for Dispute Determination to USBR under Section VI.A.3. In addition, in the event the Regional Director determines that a payment is due from a party, and if the party owed the payment needs the funds to reasonably meet cash flow needs, payment must be made promptly notwithstanding the pendency of any judicial proceedings to review the Regional Director's determination, subject to the reimbursement of the disputed payment amount if the Regional Director's determination regarding a payment obligation is later set aside in whole or in part by a court. For the purposes of this subsection, the phrases "material cash flow difficulties" and "reasonably meet cash flow needs" means the applicable party lacks sufficient unrestricted funds to pay current costs owed without being able to collect the funds associated with the disputed matter. "Unrestricted funds" has the same meaning as categories of unrestricted cash as reported by each party in its annual, audited financial statements.

C. Status of Obligations During Pendency of Dispute

1. **Payment Obligations.** During the period of any dispute between the parties regarding annual OM&R Costs collected via water rates, FWA must pay all disputed annual OM&R Costs collected from Friant Division Contractors during the course of the dispute. With respect to disputed payment obligations for Extraordinary OM&R projects or cost allocations for projects for which the budget is greater than 50% of the current year's routine OM&R Budget, to the extent costs are imposed on SLDM Contractors during the first ninety (90) days following a Dispute Notice, FWA will pay all disputed costs collected into an escrow or trust account. If the dispute is not resolved within ninety (90) days, any funds deposited into the escrow or trust account will be paid to SLDMWA, and FWA must thereafter remit all disputed payments collected to SLDMWA, unless the parties agree otherwise.

2. **Changes to Payment Obligations Resulting from Resolution of Dispute.** The resolution of any dispute for which a Dispute Notice is issued under Section VI.A will include an agreement between the parties (if resolved voluntarily) or a determination by USBR or a federal court as to the amount and timing of the retroactive adjustment or prospective adjustment, as applicable, in disputed payment obligations.

D. Termination of Transfer Agreements

The parties acknowledge that they each have a right to terminate their respective Transfer Agreement on 12 months' notice under Article 2(c) thereof, and that a material dispute relating to the interpretation or performance of this MOU, or the unsatisfactory resolution thereof, could lead to such a termination. In order to facilitate mutually acceptable resolution of disputes and reduce the possibility of a termination of either the FWA Transfer Agreement or the SLDMWA Transfer Agreement, the parties agree that neither of them will give notice of termination of a Transfer Agreement under Article 2(c) thereof for a period of at least 6 months after the date of the notice described in Section VI.A.1; provided, that if matters unrelated to any such dispute arise which cause a party to desire termination, such notice may be sooner given.

VII. RENEGOTIATION PRINCIPLES

A. Basis for Agreement

This MOU, including the SLDMWA Cost Recovery Plan and Reserve Criteria, represents the parties' negotiated agreement on an equitable apportionment of the OM&R Costs by SLDMWA. In entering into this MOU, the parties have made assumptions that water supplies and operations of the parties' respective members will not materially change while this MOU is in effect and that there will be no material change in the use of or access to facilities utilized by the parties and their members after the effective date of this MOU. Further, they have assumed the accuracy of financial data provided and/or developed by the USBR and the SLDMWA in connection with the negotiation of this MOU, the SLDMWA Cost Recovery Plan and Reserve Criteria. The parties acknowledge that all such assumptions were material to their respective decisions regarding the provisions of this MOU, including the SLDMWA Cost Recovery Plan and in the Reserve Criteria, and agree that in the event any of those assumptions proves to be incorrect, or upon the occurrence of certain other events described in Section VII.B., renegotiation of this MOU, the SLDMWA Cost Recovery Plan, and/or Reserve Criteria is appropriate.

B. Events Triggering Renegotiation of MOU

In addition to the express provisions of this MOU that require consideration of potential amendments should certain events occur, should a party conclude that this MOU, including the SLDMWA Cost Recovery Plan and Reserve Criteria, can and should be modified to address (i) such party's determination that one or more of the fundamental assumptions described in Section VII.A. was in error, (ii) an administrative or court order materially affecting the water supply or operations of one or more of the agencies comprising such party, or which makes it reasonably foreseeable that such agency(ies) will thereafter suffer a material and adverse change in its/their water supply or operations, or (iii) another significant event which makes it reasonably foreseeable that such party will bear a material increase in OM&R Costs on a per acre foot ("AF") basis, the parties commit to entering into negotiations in good faith and timely efforts to modify this MOU, the SLDMWA Cost Recovery Plan or Reserve Criteria, as applicable.

C. Inability to Reach Agreement on Modification of MOU

In the event a party seeks modification of this MOU pursuant to Section VII.A., neither party will give notice of termination of its Transfer Agreement pursuant to Article 2(c) thereof for six (6) months after the first negotiation date; provided, that if matters unrelated to the event giving rise to the party's request for modification of this MOU arise which cause a party to desire termination, such notice may be sooner given. Following such 6-month period, either party will be free to exercise its right to terminate its Transfer Agreement under Article 2(c) thereof if a mutually acceptable modification of this MOU has not been developed.

VIII. MISCELLANEOUS

A. Term of MOU

This MOU will remain in effect until it is terminated by the mutual agreement of the parties; provided, that this MOU will automatically terminate without further action of the parties upon the termination, as applicable, of either the FWA Transfer Agreement or the SLDMWA Transfer Agreement. Upon any termination of this MOU, the SLDMWA Cost Recovery Plan will also terminate, although if the FWA Transfer Agreement terminates, SLDMWA would proceed in promptly developing a new cost recovery methodology. In that regard, the parties acknowledge that the agreements described in this MOU, and particularly the agreements contained in the SLDMWA Cost Recovery Plan, are part of a negotiated and comprehensive arrangement which reflects numerous compromises and tradeoffs by the parties. Accordingly, no aspect of this MOU or the SLDMWA Cost Recovery Plan is to be construed as precedent, and all aspects thereof must be renegotiated if this MOU is terminated.

B. Attorneys' Fees

In the event of any judicial action by any of the parties seeking enforcement or interpretation of any of the terms and conditions of this MOU, the prevailing party in such action will be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses including, without limitation, taxable costs and reasonable attorneys' fees.

C. Entire Agreement

This MOU and its exhibits contain all of the agreements of the parties with respect to the subject matter of this MOU. No other prior agreement or understanding pertaining to any such matter will be effective for any purpose. No provisions of this MOU may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the parties.

D. Exhibits

This MOU includes Exhibit A, a list of Settlement Contractors; Exhibit B, the SLDMWA Amended OM&R Cost Recovery Plan; Exhibit C, Reserve Criteria; and Exhibit D, a list of SLDM Contractor Service (Delivery) Areas. The parties anticipate that Exhibit A and Exhibit D

may be amended by SLDMWA from time to time in coordination with USBR. Exhibit B may be amended consistent with Section VII of this MOU and pursuant to Article 12(b)(3) of the SLDMWA Transfer Agreement. Exhibit C may be amended consistent with Section VII of this MOU, and may include coordination with the OM&R Technical Committee and/or the Finance & Administration Committee during the annual OM&R Budget development process. Any and all such updated exhibits will be attached to this MOU and replace all prior versions of such exhibits.

E. Interpretation

The validity and interpretation of this MOU (including all exhibits) will be governed by the laws of the State of California. The MOU will be construed simply, as a whole, and in accordance with its fair meaning. The use of the singular includes the plural, and vice versa.

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

SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY

FRIANT WATER AUTHORITY

By: _____
Cannon Michael, Chair

By: _____
Jim Erickson, Chair

By: _____
Federico Barajas, Secretary

By: _____
Josh Pitigliano, Secretary

EXHIBIT A

SETTLEMENT CONTRACTORS

The following contractors are entitled to receive, without charge, the designated acre feet of Settlement Water through the Project Facilities as stated below or as may be amended.

	Contract#	Acre Feet
Coelho Family Trust (Formerly Mason A. Loundy Trustee)	14-06-200-7859A	1,332
State of California, Dept. of Fish & Game (Mendota Wildlife Area) (Formerly Mason A. Loundy Trustee)	14-06-200-7859A Assign 1	1,321
State of California (Mendota Wildlife Area)	14-06-200-4359A AMD1	1,143
San Joaquin River Exchange Contractors Water Authority: <ul style="list-style-type: none"> • Central California Irrigation District • Columbia Canal Company • San Luis Canal Company • Firebaugh Canal Company 	llr-1144	840,000
Fresno Slough Water District	14-06-200-40 19A	866
Tranquillity Public Utility District (Formerly Hughes, Melvin & Mardella)	14-06-200-3537A	93
James Irrigation District	14-06-200-700-A	9,700
M.L. Dudley and Company, John G. Indart, and Doris J. Indart	14-06--200-4448A	2,280
Patterson Irrigation District	14-06-200-3598A-LTR1-P	6,000
Reclamation District No. 1606	14-06-200-3802A	342
Tranquillity Irrigation District	14-06-200-701A	20,200
Marvin A. & Patricia Meyers	9-07-20-W1608	210
Kenneth and Karen Carvalho Revocable Trust (Formerly Virginia L. Lempeis Separate Property Trust)	11-WC-20-0026	600
Total		884,087

EXHIBIT B

2024 SLDMWA OM&R COST RECOVERY PLAN

This 2024 SLDMWA OM&R Cost Recovery Plan was developed consistent with Article 12(b) of the SLDMWA Transfer Agreement, and was provided to all parties with payment obligations not less than sixty (60) days to the effective date of [REDACTED] (“Effective Date”). Notwithstanding the Effective Date of this Plan, the cost recovery methodology will be applied retroactively to March 1, 2024.

I. INTRODUCTION - The following is a description of the allocation and recovery of OM&R Costs for the following facilities by the San Luis & Delta-Mendota Water Authority:

1. Delta-Mendota Canal (“DMC”);
2. C.W. “Bill” Jones Pumping Plant (“Jones PP”);
3. C.W. “Bill” Jones Pumping Plant Operations and Maintenance Complex;
4. O’Neill Pumping/Generating Plant (“O’Neill PGP”) and Switchyard;
5. Delta-Mendota Canal – California Aqueduct Intertie Pumping Plant (“Intertie”)
6. Mendota Pool³;
7. Kesterson Reservoir;
8. Federal share of the San Luis Joint Use conveyance and conveyance pumping facilities; and
9. San Luis Drain including Redfern Drain.

This 2024 SLDMWA OM&R Cost Recovery Plan is an exhibit to the Second Amended and Restated Memorandum of Understanding Between the Friant Water Authority and San Luis & Delta-Mendota Water Authority Relating to Allocation, Collection and Payment of Operation,

³ As Mendota Pool is a non-Federal facility, SLDMWA’s operational responsibilities related to Mendota Pool are limited to those activities specifically required to fulfill the legal and contractual obligations of the United States. Unless undertaken pursuant to separate agreements with beneficiaries that will bear the cost, SLDMWA does not conduct additional operation, maintenance, or replacement activities for Mendota Pool.

Maintenance & Replacement Costs for Water Delivered Through Certain Central Valley Project Facilities (“MOU”). The MOU defines the terms and conditions for allocating and recovering the costs associated with the OM&R of the above referenced facilities. Friant Division Contractors will be obligated to pay the OM&R Costs associated with the delivery of Settlement Water to the Settlement Contractors in accordance with the terms of this Cost Recovery Plan. FWA will, as part of the FWA cost recovery methodology developed under the FWA Transfer Agreement, provide for the recovery of OM&R Costs allocated to the Settlement Contractors under this SLDMWA OM&R Cost Recovery Plan. To the extent the USBR has conferred upon FWA the legal authority to do so, FWA will allocate such costs among, and collect such costs from, the Friant Division Contractors. For ease in representation and for practical considerations, and for the purposes of the MOU and this SLDMWA OM&R Cost Recovery Plan only, Friant Division Contractors will be considered a single Water Delivery Contractor whose water deliveries constitute the total Settlement Water deliveries of the Settlement Contractors. The USBR will be allocated the costs associated with the delivery of Other Water under the provisions of the SLDMWA Transfer Agreement, except to the extent that such Other Water is specifically attributable to another party (e.g. non-CVP water delivered under a Warren Act contract wherein the Warren Act contractor will be allocated applicable OM&R Costs). For purposes of completeness, OM&R Costs associated with Project Facilities that are unnecessary for the delivery of Settlement Water (such as the San Luis Drain) are allocated in this SLDMWA OM&R Cost Recovery Plan, but no part of such OM&R Costs will be allocated, under this Cost Recovery Plan, to the Friant Division Contractors, except as expressly noted.

The MOU dictates that the allocation of costs for specific acquisitions or OM&R activities not already addressed by this Cost Recovery Plan will be allocated in a manner consistent with the principles contained in this Cost Recovery Plan. Those principles include:

1. Except where expressly noted otherwise, Friant Division Contractors are responsible for paying OM&R Costs for Project Facilities used for the delivery of Settlement Water to the Settlement Contractors in accordance with the terms of the MOU and this Cost Recovery Plan;
2. Water rates will be comprised of various cost pool components based on the

principle that OM&R Costs are allocated to water deliveries based on the Project Facilities used; and

3. All Water Delivery Contractors and Friant Division Contractors have a critical interest in the effective and efficient OM&R of the Project Facilities.

II. DEFINITIONS - As used in this Cost Recovery Plan, the following terms have the meanings as set forth below. To the extent the following terms are defined in the MOU, their definitions are restated here for convenience:

- A. Extraordinary OM&R: Extraordinary OM&R has the same meaning as the non-capitalized term included in the definition of OM&R in the SLDMWA Transfer Agreement. That is, the performance, funding, and financing of emergency or unusual operation and maintenance or extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs to the extent such costs are not considered Capital Improvement costs (as defined in the SLDMWA Transfer Agreement) unless SLDMWA chooses to accomplish and finance such Capital Improvements under Article 5(b) of its Transfer Agreement.
- B. Friant Division Contractors: Water Delivery Contractors receiving water service from the Friant Division of the CVP, including members and non-members of FWA.
- C. FWA Transfer Agreement: That certain *Agreement Between the United States of America and Friant Water Authority to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the Friant-Kern Canal and Associated Works* effective October 5, 2020, as amended.
- D. OM&R: Operation, maintenance and replacement as that phrase is defined in the SLDMWA Transfer Agreement.
- E. OM&R Budget: SLDMWA's annual budget to fund the OM&R Program, which is developed and approved in accordance with the procedures set forth in Article 12(a) of the SLDMWA Transfer Agreement.

- F. OM&R Costs: Costs of providing OM&R for the Project Facilities pursuant to the SLDMWA Transfer Agreement, including without limitation conveyance pumping costs associated therewith.
- G. Party Entitled to Utilize or Receive Other Water: A party required to pay SLDMWA the amounts described in Article 12 of the SLDMWA Transfer Agreement in connection with the delivery of “Other Water,” as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.
- H. Project Facilities: The physical works and appurtenances associated with the C.W. “Bill” Jones Pumping Plant (formerly Tracy Pumping Plant), C.W. “Bill” Jones Pumping Plant Operations and Maintenance Complex, Delta-Mendota Canal, Delta-Mendota Canal – California Aqueduct Intertie Pumping Plant (“Intertie”), O’Neill Pumping/Generating Plant and Switchyard, the federal share of the O’Neill Forebay and Dam, Mendota Pool (see footnote no. 4 above in the Introduction) Kesterson Reservoir, the federal share of San Luis Unit Joint Use conveyance and conveyance pumping facilities, and the San Luis Drain.
- I. Reserves: Funds accumulated to meet unexpected emergencies or planned multi-year financial commitments of Extraordinary OM&R and/or capital improvement projects to replace or repair Project Facilities and equipment that are not included in the annual costs of ongoing, regular, or routine operations, maintenance, repairs, replacements, and other activities and actions necessary for continued structural integrity and operational reliability of Project Facilities required for the delivery of “Project Water,” as defined in the SLDMWA Transfer Agreement.
- J. Settlement Contractors: Those contractors, listed in Exhibit A of the MOU, entitled to receive water service through the Project Facilities without charge, except as provided in this Cost Recovery Plan.
- K. Settlement Water: Water the Settlement Contractors are entitled to receive without charge from Project Facilities.
- L. SLDM Contractors: Water Delivery Contractors that receive water (other than Settlement Water) via any of the Project Facilities described in the SLDMWA

Transfer Agreement.

- M. SLDMWA: The San Luis & Delta-Mendota Water Authority.
- N. SLDMWA Transfer Agreement: That certain *Agreement between the United States of America and San Luis & Delta-Mendota Water Authority to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the San Luis and Delta-Mendota Canals, C.W. "Bill" Jones Pumping Plant, Delta-Mendota Canal/California Aqueduct Intertie Pumping Plant, O'Neill Pumping/Generating Plant, San Luis Drain and Associated Works* effective January 14, 2020, as amended.
- O. USBR: United States Department of Interior, Bureau of Reclamation.
- P. Water Delivery Contract: (1) Any contract entered into by the Secretary of the United States Department of the Interior under the provisions of Sections 9(c), 9(d), or 9(e) of the Reclamation Project Act of 1939 or Section 3404 of the Central Valley Project Improvement Act pursuant to which "Project Water" is to be supplied from or through Project Facilities and (2) any exchange contract, water rights settlement contract, or similar agreement pursuant to the terms of which water is to be supplied by the United States from or using the Project Facilities, as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.
- Q. Water Delivery Contractor: A party holding a Water Delivery Contract with the United States, as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.
- R. Year: March 1 through February 28/29.

III. COST POOLS - OM&R Costs will be accumulated into eight cost pools, defined as the Upper DMC and Jones PP cost pool ("Upper Cost Pool"), the Lower DMC cost pool ("Lower Cost Pool"), the Intertie Variable cost pool ("Intertie Variable Cost Pool"), the Mendota Pool cost pool ("Mendota Pool Cost Pool"), the San Luis Joint Use conveyance and conveyance pumping facilities cost pool ("DWR Cost Pool"), the Jones PP power cost pool ("Jones Power

Cost Pool”), the O’Neill PGP cost pool (“O’Neill Cost Pool”) and the San Luis Drain cost pool (“San Luis Drain Cost Pool”).

A. The Upper Cost Pool includes:

1. The OM&R Costs for the Jones PP and related Jones PP Operations and Maintenance Complex, excluding energy costs;
2. A pro rata share of the OM&R Costs for the DMC from the Jones PP to Check 13 based on miles of DMC serviced above and below Check 13 (70/116 miles or 30.64%) (“Upper DMC”);
3. The OM&R Costs associated with routine OM&R of the Intertie, except that SLDMWA will work with USBR to ensure the State of California pays routine Intertie OM&R Costs associated with the movement of State water through the Intertie;
4. The OM&R Costs for the Westley, Newman, and Volta Wasteways; and
5. The OM&R Costs for the intake channel from the Tracy Fish Facility to the Jones Pumping Plant.

B. The Lower Cost Pool includes:

1. A pro rata share of the OM&R Costs for the DMC from Check 13 to (but not including) the Mendota Pool based on miles of DMC serviced above and below Check 13 (46/116 miles or 39.66%) (“Lower DMC”); and
2. The OM&R Costs for the Firebaugh Wasteway.

C. The Intertie Variable Cost Pool includes:

1. DWR wheeling charges for conveyance of water from the Intertie through the California Aqueduct to O’Neill Forebay; and
2. USBR’s project use energy (“PUE”) costs associated with Intertie operations.

D. The Mendota Pool Cost Pool includes the operational costs associated with activities at Mendota Pool that are specifically required to fulfill statutory or contractual obligations of the United States, including but not limited to, managing deliveries from the DMC into Mendota Pool, coordination actions to

assist CCID in maintaining certain elevations at Mendota Pool, coordination of flood releases from the San Joaquin River and Kings River into Mendota Pool, and monitoring and measuring water deliveries taken by contractors at Mendota Pool. Unless undertaken pursuant to separate agreements with beneficiaries that will bear the cost, SLDMWA does not conduct additional operation, maintenance, or replacement activities for Mendota Pool.

- E. The DWR Cost Pool includes the federal share of the OM&R Costs of the San Luis Joint Use conveyance and conveyance pumping facilities and the energy costs incurred in pumping water at the Dos Amigos Pumping Plant. The DWR costs associated with the OM&R Costs of the O’Neill Forebay and Dam are included in the O’Neill Cost Pool and, therefore, are not included in the DWR Cost Pool.
- F. The Jones Power Cost Pool includes the energy costs incurred at the Jones PP and related Jones PP Operations and Maintenance Complex.
- G. The O’Neill Cost Pool includes:
 - 1. The OM&R Costs for the O’Neill PGP;
 - 2. The OM&R Costs for the O’Neill PGP intake upstream of Check 13 from the DMC to the O’Neill PGP;
 - 3. The energy costs, net of regeneration credits, incurred in pumping water at the O’Neill PGP; and
 - 4. The DWR OM&R Costs for the federal share of the O’Neill Forebay and Dam.
- H. The San Luis Drain Cost Pool includes:
 - 1. The OM&R of the San Luis Drain; and
 - 2. The Maintenance of the Kesterson Reservoir, except that maintenance activity relating to the Cleanup Program as defined in the Bureau of Reclamation, U.S. Department Interior Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995 will be assigned in accordance with the Report.

IV. COST ALLOCATION - The OM&R Costs assigned each Year to each of the cost pools described above will be allocated to Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water using the facilities described above for each cost pool in accordance with the following methodology:

- A. Upper and Lower Cost Pools - Costs accumulated in the Upper and Lower Cost Pools will be allocated to each Water Delivery Contractor or Party Entitled to Receive or Use Other Water based upon the party's cost allocation percentage, subject to the following:
1. The cost allocation percentage for the Upper and Lower Cost Pools will be determined by dividing a Water Delivery Contractor's or Party Entitled to Utilize or Receive Other Water's "delivery base" by the total delivery base for all Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water sharing in each cost pool.
 2. The delivery base for each SLDM Contractor will be computed for the Upper Cost Pool and the Lower Cost Pool as the greater of the actual water delivered to the SLDM Contractor utilizing that cost pool's facilities during the Year, or the amount established under the Minimum Participation requirements described in Section V.A. hereof.
 3. 25% of the OM&R Costs for the Lower Cost Pool will be allocated in the Mendota Pool Cost Pool.
- B. Intertie Variable Cost Pool – Costs accumulated in the Intertie Variable Cost Pool will be allocated to each Water Delivery Contractor and Party Entitled to Utilize or Receive Other Water on the same basis as the Upper and Lower Cost Pool, subject to the following:
1. In water years where the south-of-Delta agricultural water allocation is 0% and/or in water years where 0% agricultural service water is available for delivery during the contract year (regardless of the south-of-Delta agricultural service water allocation): 65% of variable Intertie OM&R Costs will be allocated to Friant Division Contractors. The remaining 35%

- will be allocated to all other SLDM Contractors and Parties Entitled to Utilize or Receive Other Water on the same basis as the Upper Cost Pool.
2. In water years where the south-of-Delta agricultural water allocation is 1% - 5%:
 - i. The first time such event occurs, 20% of variable Intertie OM&R Costs will be allocated to Friant Division Contractors, with the remaining 80% being allocated to all other SLDM Contractors and Parties Entitled to Utilize or Receive Other Water on the same basis as the Upper Cost Pool;
 - ii. The second time such event occurs, no cost will be imposed on Friant Division Contractors (i.e., SLDM Contractors and Parties Entitled to Utilize or Receive Other Water will pay on the same basis as the Upper Cost Pool); and
 - iii. The third time such event occurs, FWA, SLDMWA, and USBR will negotiate a new allocation methodology for 1% to 5% allocation years.
 3. In water years where the south-of-Delta agricultural service water allocation is greater than 5%: Friant Division Contractors will not be allocated any variable Intertie OM&R Costs; 100% of variable Intertie OM&R Costs will be allocated to SLDM Contractors and Parties Entitled to Utilize or Receive Other Water on the same basis as the Upper Cost Pool.
 4. In water years where the south-of-Delta agricultural service water allocation is greater than 5% and San Joaquin River Restoration Program Delta recapture flows are pumped at Jones PP, the daily acre-feet of recapture flows pumped at Jones PP that coincide with days that the Intertie is in operation will be presumed to have moved through the Intertie. Friant Division Contractors will be allocated a share of variable OM&R Costs for the Intertie by including these presumed flows in the

total acre-feet calculation for SLDM Contractors and Parties Entitled to Utilize or Receive Other Water for that water year, and allocating a corresponding share of variable OM&R Costs to Friant Division Contractors. For water years where the south-of-Delta agricultural service water allocation is less than or equal to 5%, regardless of what volumes are pumped at Jones PP, no additional OM&R Costs for the Intertie will be allocated to Friant Division Contractors above what is enumerated in subsections 2.A-C above.

5. Intertie operations will be reviewed upon request by either Party to determine if changes in the allocation methodology are warranted.
6. NOTE: SLDMWA will work with USBR to ensure the State of California pays variable Intertie OM&R Costs associated with the movement of State water through the Intertie; Friant Division Contractors will not be allocated any such costs.

C. Mendota Pool Cost Pool – Costs within the Mendota Pool Cost Pool will be allocated to the contractors taking delivery in Mendota Pool based upon the Water Delivery Contractor's or Party Entitled to Utilize or Receive Other Water's cost allocation percentage, using similar methodology to that described in Section IV.A.1 above, subject to the following:

1. In addition to the OM&R Costs for Mendota Pool activities, the Mendota Pool Cost Pool will include 25% of the OM&R Costs of the Lower Cost Pool.
2. Deliveries from the Mendota Pool that do not originate from the DMC (such as San Joaquin and Kings River flows and Mendota Pool pump-ins) will be excluded from the allocation of all other OM&R Costs, including O'Neill Storage, Extraordinary OM&R, and Reserve cost allocations, unless specifically agreed to by SLDMWA and FWA.
3. Minimum Participation requirements as described in Section V.A. will not apply to the allocation of the Mendota Pool Cost Pool.

D. DWR Cost Pool - Costs within the DWR Cost Pool will be sub-allocated into two cost pools, defined as the North of Dos Amigos Cost Pool and the South of Dos Amigos Cost Pool.

1. The North of Dos Amigos Cost Pool includes the federal share of the DWR OM&R Costs associated with the San Luis Canal north of the Dos Amigos Pumping Plant.
2. The South of Dos Amigos Cost Pool includes the federal share of the DWR OM&R Costs associated with the San Luis Canal south of the Dos Amigos Pumping Plant, the federal share of the DWR OM&R Costs associated with the Dos Amigos Pumping Plant, and the energy costs incurred at the Dos Amigos Pumping Plant.

OM&R Costs for the North of Dos Amigos Cost Pool and South of Dos Amigos Cost Pool will be allocated to the Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water directly utilizing the facilities in each such cost pool. The percentage of costs allocated to each such contractor/party will be determined by dividing the total water deliveries to such contractor/party utilizing the Project Facilities in each cost pool by the total water deliveries to Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water utilizing such facilities during the Year.

E. Jones Power Cost Pool - Costs within the Jones Power Cost Pool will be allocated to those Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water whose water is made available by virtue of water being pumped at the Jones PP. The percentage of costs allocated to each such contractor/party will be determined by dividing the total water deliveries made available to each such contractor/party by the total of all such water deliveries made available. Minimum Participation requirements as described in Section V.A. will not apply to the allocation of the Jones Power Cost Pool.

- F. O'Neill Cost Pool - Each Year, the O'Neill Cost Pool will be sub-allocated between two cost pools, the "Direct Pumping Cost Pool" and the "Storage Pumping Cost Pool" as follows:
1. For purposes of allocating the O'Neill Cost Pool between the Direct Pumping Cost Pool and Storage Pumping Cost Pool only, water deliveries made during the Year through the San Luis Joint Use or San Felipe facilities will be deemed water delivered in the Direct Pumping Cost Pool and water released from the O'Neill Forebay through the O'Neill PGP into the DMC will be deemed water delivered in the Storage Pumping Cost Pool. Water that is not conveyed through the DMC will not be deemed water delivered in either the Direct Pumping Cost Pool or the Storage Pumping Cost Pool.
 2. The O'Neill Cost Pool will be sub-allocated to the Direct Pumping Cost Pool and the Storage Pumping Cost Pool pro rata based upon the percentage obtained by dividing each respective pools' share of water deemed delivered, during the Year as described above, against the sum of the two pools' water deliveries during the Year.
 3. The Direct Pumping Cost Pool will be further sub-allocated to Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water taking delivery of water directly from the San Luis Joint Use or San Felipe facilities during the Year based upon the percentage obtained by dividing the water delivered to a contractor/party utilizing the O'Neill PGP for water deliveries through the federal share of the San Luis Joint Use facilities or the San Felipe facilities by the total water deliveries utilizing the O'Neill PGP for water deliveries through the federal share of the San Luis Joint Use facilities and the San Felipe facilities during the Year.
 4. The Storage Pumping Cost Pool will be further sub-allocated to Water Delivery Contractors and Parties Entitled to Utilize or Receive Other

Water taking delivery of water directly from the DMC or Mendota Pool facilities based on the percentage obtained by dividing the water delivered directly from the DMC or Mendota Pool facilities to such contractor/party by the total water delivered directly from the DMC or Mendota Pool facilities to Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water during the Year. Deliveries to Mendota Pool that are not conveyed through the DMC will be excluded from the Storage Pumping Cost Pool allocation.

None of the allocations described above for the O'Neill Cost Pool will be subject to the Minimum Participation requirements as described in Section V.A.

- G. San Luis Drain Cost Pool - The maintenance costs assigned to the San Luis Drain Cost Pool will be allocated to those Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water with contractual requirements for the payment of such maintenance costs, except that maintenance activity relating to the Cleanup Program as defined in the Bureau of Reclamation, U.S. Department Interior Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995 will be assigned in accordance with the Report.

V. MISCELLANEOUS COST ALLOCATION PROVISIONS

- A. Minimum Participation - In recognition of the value of providing OM&R even in Years when an individual SLDM Contractor's pro rata share of costs based upon that Year's water deliveries is very low or non-existent, there will be created Minimum Participation amounts of assumed minimum water deliveries, for purposes of cost allocation only, as follows: In Years when an irrigation SLDM Contractor's total deliveries (i.e., deliveries under its contract with the USBR plus other deliveries made available through the Jones PP and the DMC) are below 25% of its maximum contractual entitlement, the delivery base for purposes of allocating the Upper Cost Pool and Lower Cost Pool will be 25% of that irrigation

SLDM Contractor's maximum contractual entitlement.

- B. Water Transfers - A SLDM Contractor who receives transfer water ("SLDM Transferee") from a Water Delivery Contractor will have such water deliveries included in the SLDM Transferee's delivery base for each applicable cost pool described in Section I. above for purposes of allocating OM&R Costs for the Year (but not for delivery purposes in establishing reserves). As a result, all costs associated with the delivery of transferred water will be allocated to the SLDM Transferee in the same manner as costs are allocated to the SLDM Transferee for its CVP contractual supply and will be subject to Year-end adjustment and reconciliation per Section VIII below.
- C. Other Water –
1. All costs associated with the conveyance of Other Water through Project Facilities, including all components that may be required by Reclamation, will be assigned to the Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water that takes delivery of such Other Water. As a result, all costs associated with the delivery of Other Water will be allocated to the Water Delivery Contractor in the same manner as costs are allocated to that Water Delivery Contractor for its CVP contractual supply and will be subject to Year-end adjustment and reconciliation per Section VII.D. below. In the case of deliveries of Other Water to the Settlement Contractors, the applicable Settlement Contractors, not the Friant Division Contractors, will be responsible for all costs associated with the delivery of the Other Water, including an allocable share of the OM&R Costs and Reserve Costs (Section VI.D) addressed by this SLDMWA OM&R Cost Recovery Plan.
 2. Losses - A loss factor of five percent (5%), or the loss percentage provided in the governing contract or agreement, as applicable, will be applied to the delivery of any Other Water conveyed in any Project Facilities (e.g., if the loss factor is five percent (5%), and 100 AF of Other Water is pumped

at Jones PP, or as otherwise metered, that will result in 95 AF being considered available for delivery and will be allocated OM&R Costs accordingly).

VI. RESERVES - In recognition of the multiple year benefits of performing certain long-term OM&R activities for Project Facilities (excepting the San Luis Joint Use conveyance and conveyance pumping facilities and Mendota Pool, unless pursuant to separate agreement), including, but not limited to, the long-term capital outlays for the purchase of equipment and vehicles and reserves mandated by the SLDMWA Transfer Agreement, SLDMWA will accumulate Reserves and regularly use these Reserves for these activities in accordance with the following:

A. Reserves -

1. Annually, a ten-year projection of expenditures in specified Reserve Categories as listed in Exhibit C to the MOU will be made (“Ten-Year Plan”), along with a single year projection of expenditures in those categories for the forthcoming fiscal year. The Reserve cash requirement for the forthcoming fiscal year will be allocated to each Water Delivery Contractor pro rata based upon the past ten years of historic water deliveries (ten-year rolling average of deliveries), net of funds collected from Parties Entitled to Utilize or Receive Other Water.
2. Each Water Delivery Contractor’s ten-year rolling average of deliveries will include all Water Delivery Contract deliveries, water transferred out to other Water Delivery Contractors that utilize Project Facilities for which costs are allocated under this Cost Recovery Plan, and Other Water deliveries to that Water Delivery Contractor, subject to the following:
 - i. Each Water Delivery Contractor’s ten-year rolling average of deliveries will be subject to the inclusion of the annual Minimum Participation amounts as determined in Section V.A above;
 - ii. Ten-year rolling average of deliveries will not include:

- a. Water transferred in by the applicable Water Delivery Contractor;
 - b. Water transferred out by the applicable Water Delivery Contractor that does not utilize Project Facilities for which costs are allocated hereunder; or
 - c. Deliveries to Mendota Pool not conveyed through the Lower DMC (e.g. San Joaquin River flood flows, Kings River flood flows, water released from Millerton Reservoir, Mendota Pool pump-in water, etc.).
- iii. Notwithstanding the reference above to water transferred out to other Water Delivery Contractors being included in each Water Delivery Contractor's ten-year rolling average of deliveries, water transferred from a San Joaquin River Exchange Contractor ("Exchange Contractor") to a Water Delivery Contractor will be included in the San Joaquin River Exchange Contractor Water Authority's ("SJRECWA") total deliveries for the purposes of allocating Reserve costs and Extraordinary OM&R Costs, and costs associated with such transfers will not be an obligation of Friant Division Contractors, subject to the following:
- a. Beginning in Water Year 2026 (March 1, 2026 – February 28, 2027), deliveries associated with Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority ("Exchange Contractor Transfer Program"), as that program may be amended, will be excluded from FWA's Reserve allocation.
 - b. In the interim, the Reserve calculations to support final accountings for Water Years 2022, 2023, 2024, and 2025 will continue to include the deliveries associated with Exchange Contractor transfers in FWA's Reserve

allocation. The same methodology (utilizing offsetting adjustments) used to calculate the reserve obligation for FWA in Water Year 2019 will apply.

- c. Beginning in Water Year 2026, SLDMWA will no longer make the offsetting adjustments to the delivery data used to calculate the Reserves as outlined in Section VI.A.2.iii.b. All delivery volumes associated with the Exchange Contractor Transfer Program will be moved from FWA's Reserve allocation to the SJRECWA's Reserve allocation.⁴ Any offsetting adjustments (including historical adjustments) will be removed in their entirety from the Reserve calculation for the SJRECWA.
3. In any one Year, Reserve expenditures may benefit some Project Facilities or cost pools more than others. However, in the long-term, it is expected that Reserves will be spent generally in accordance with the overall apportionment of the OM&R Budget for each facility as that facility's OM&R Budget relates to the entire OM&R Budget (without consideration or inclusion of the cost of energy, the OM&R Costs of the San Luis Joint Use conveyance and conveyance pumping facilities, the OM&R Costs of the Mendota Pool, or costs associated with the San Luis Drain).
4. One-time or de minimis use of Project Facilities (i.e., the delivery of Other Water to an individual or entity that otherwise has irregular or infrequent deliveries made through Project Facilities maintained by SLDMWA) will be charged the SLDMWA Board-adopted Reserve rate component(s) for the delivery(ies). Such one-time or de minimis water deliveries will not be included in any water delivery base in the determination of Reserves or Reserve allocations hereunder. Revenues generated to Reserves for this

⁴ SLDMWA anticipates that SJRECWA will pass through any costs associated with the Reserve allocation to the entities receiving transfers.

one-time or de minimis use of Project Facilities will be used to reduce that Year's total Reserve requirement. Reserve contributions from one-time or de minimis use of Project Facilities will not be subject to annual reconciliation and adjustment.

5. Consistent with Sections VI.A.1-4 above and Section VII below, SLDMWA will include a Reserve component in the calculation of OM&R Water Rates for all deliveries utilizing Project Facilities, unless expressly excluded.

B. Emergency Reserves – SLDMWA will establish and maintain an Emergency Reserve Fund consistent with Article 14 of the SLDMWA Transfer Agreement. SLDMWA will include a sub-component in the Reserve component described in Section VI.A above for the Emergency Reserve Fund when required.

C. Other – SLDMWA may also utilize Reserve funds to repay specific Extraordinary OM&R Costs that utilize long-term financing or debt. When the SLDMWA Board of Directors takes action to authorize such long-term financing or debt and the collection of Reserve funds to repay the same, the SLDMWA Board of Directors will establish whether and how the additional Reserve fund component(s) will be included in the calculation of OM&R Water Rates for some or all deliveries utilizing Project Facilities. It is understood that the cost allocation methodology for individual Extraordinary OM&R projects may differ from the cost allocation methodology used to allocate Reserve costs.

VII. RATE COMPONENT CALCULATIONS / WATER RATES

A. Rate components will be established for each cost pool listed in Section III on a per AF basis. Rate components will be calculated in accordance with the cost allocation to Water Delivery Contractors in Section IV using budgeted amounts for the Year for each cost pool divided by projected water deliveries utilizing the Project Facilities and/or energy associated with the applicable cost pool for the Year. The Reserve rate component(s) will be computed by dividing each Water

Delivery Contractor's expected annual contribution, in accordance with Section VI.A-B, by projected water deliveries to that Water Delivery Contractor for the Year.

- B. The "OM&R Water Rate" for a given delivery will be calculated by adding together various cost pool components and/or the Reserve rate component(s) associated with that delivery. For example, the OM&R Water Rate for a delivery along the Lower DMC will include the following components: Upper Cost Pool + Jones Power Cost Pool + Intertie Variable Cost Pool (if applicable) + Lower Cost Pool + O'Neill Storage Cost Pool + Reserves (more than one reserve component potentially applicable). The proposed water rates for deliveries to various geographic locations, including the cost pool and/or Reserve components, will be provided to the SLDMWA Board of Directors when OM&R Water Rates are presented to the Board of Directors for action.
- C. Reference to "adjusted" OM&R Water Rates on rates sheets presented to the SLDMWA Board of Directors will refer to rates that utilize some, but not all rate components for a delivery that does not incur certain OM&R Costs. For example, an "adjusted" OM&R Water Rate is charged to deliveries that are pumped-in along the Lower DMC and do not utilize Upper Cost Pool facilities.

VIII. PAYMENT AND RECONCILIATION

- A. Amounts payable for water delivered to Water Delivery Contractors each calendar month will be computed by multiplying the sum of the rate components (Rate) applicable to water deliveries by the quantity (acre feet) of such water deliveries scheduled for the month, adjusted for differences between actual and scheduled deliveries, at the applicable Rate, for prior months.
- B. SLDMWA will bill FWA to provide for recovery of OM&R Costs allocated to the Settlement Contractors that are payable by the Friant Division Contractors under this SLDMWA OM&R Cost Recovery Plan.
- C. Payments due under this SLDMWA OM&R Cost Recovery Plan for water

deliveries will be made in advance. All payments must be received by SLDMWA by the 15th of the month prior to the month of such scheduled water deliveries. For instances where SLDMWA invoices FWA after the 10th of the month, a minimum of five (5) calendar days will be afforded FWA for payment. Notification of electronic transfer of funds payments to the SLDMWA will be provided in advance of or concurrent with such payment.

- D. Payments received after the due dates noted above are delinquent and will be subject to an interest charge, as well as to any remedies for deficiencies provided in Article 12 of the SLDMWA and FWA Transfer Agreements and IV.B of the MOU. The interest charge will be calculated pursuant to the Prompt Payment Act, as amended (31 U.S.C. § 3901, et seq.). The interest charge will be based upon any and all accumulated advance payment deficiencies. Interest will accrue for each day past the due date and will be accumulated based upon a 360-day year (interest will compound on a simple interest basis).
- E. Annual reconciliation and adjustment of the OM&R Costs and their allocation to each Water Delivery Contractor (“Final Accounting”) will be made within sixty (60) days following the completion and SLDMWA Board of Directors’ acceptance of the annual audited financial statements containing the costs to be allocated. The Final Accounting for a given Year will be treated as final and no longer subject to any dispute following the expiration of the applicable statute of limitations, as may be modified by law. The parties also agree that SLDMWA may reopen a Final Accounting under appropriate circumstances.
- F. Reconciled and adjusted OM&R Cost allocation applicable to each Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water, including annual reserve amounts, will be compared to payments made by or on account for each Water Delivery Contractor for water deliveries during the Year. In the event payments made by or on account of a Water Delivery Contractor exceed costs allocated to that Water Delivery Contractor (surplus), SLDMWA will refund the amount of the surplus to the payee or the payee may direct SLDMWA to apply

such surplus to future amounts due under this SLDMWA OM&R Cost Recovery Plan. In the event costs allocated to the Water Delivery Contractor exceed payments made by or on account of a Water Delivery Contractor (deficiency), the payee will have thirty (30) days from the notice of such deficiency to make payment. Payments not received within thirty (30) days will be subject to the late payment provision as described in Section VII.B above starting on the date of delinquency, as well as subject to any remedies for deficiencies provided in Article 12 of the SLDMWA and FWA Transfer Agreements and IV.B of the MOU.

- G. SLDMWA will apply funds to cover deficiencies paid by the USBR under appropriate legal instruments in accordance with terms outlined in Section 12 of the SLDMWA Transfer Agreement.
- H. FWA will collect and remit payments due for OM&R Costs allocated to Settlement Contractors under this SLDMWA OM&R Cost Recovery Plan in accordance with the terms of this section. FWA will apply funds to cover deficiencies paid by the USBR under appropriate legal instruments in accordance with terms outlined in Section IV of the MOU and Section 12 of the FWA Transfer Agreement.

EXHIBIT C

RESERVE CRITERIA

In recognition of the long-term benefits associated with certain OM&R activities, expenditures meeting the criteria established below will be made from Reserve funds accumulated for such purposes, consistent with Section VI of the SLDMWA OM&R Cost Recovery Plan.

1. Reserve Categories:

A. Major Non-Routine Maintenance/Extraordinary OM&R:

- i. Major non-routine maintenance improvements, modifications, replacements, or repairs, additions, or modernizations with long term benefits, exceeding one year, that have a total cost greater than **\$60,000**, including labor and labor related costs for projects identified on the Ten-Year Plan.
- ii. For any Extraordinary OM&R project for which SLDMWA's estimated total project cost is greater than 50% of the current year's routine OM&R Budget, excluding power and Reserves costs, the Planning Committee will review, evaluate, and establish a recommendation for the allocation of costs of any Extraordinary OM&R project.

B. Equipment: Replacement of mobile/stationary equipment and heavy equipment identified on the Ten-Year Plan with a total replacement cost greater than **\$30,000**.

Equipment types and examples are as follows:

- i. Heavy Equipment (Off-Road – Unlicensed): Motor graders, loaders, backhoes, excavators, dozers, skid-steers, cranes, tractors, implements (i.e., discs, mowers, etc.), man-lifts, forklifts, etc.
- ii. Heavy Equipment (On-Road – Licensed): Truck/tractors, spray trucks, dump trucks, water trucks, boom trucks, utility trucks heavier than 1.5 ton, heavy transport trailers, tilt trailers, flatbed trailers, trailer-mounted pumps/generators/compressors, belly dump trailers, etc.
- iii. Shop Support Stationary Equipment: Machine Shop equipment, Electric Shop test equipment, Vehicle Maintenance Shop equipment, Sandblast and Paint Shop equipment, etc.

C. Vehicles: Replacement of light passenger/utility vehicles identified on the Ten-Year Plan that have a total replacement cost (including labor) greater than **\$25,000** (e.g., sedans, pickups, utility vehicles, vans, etc.).

D. Office & Computer/Network Equipment: Replacement of office and electronic equipment and computer software identified on the Ten-Year Plan with an annual aggregate replacement cost greater than **\$20,000**.

E. Facility Infrastructure Rehabilitation/Replacement: Improvement, modification, replacement, repair, addition, or modernization projects on the SLDMWA Project Facilities identified on the Ten-Year Plan that have a total cost greater than **\$30,000**, including labor and labor-related costs. The typical types of projects for this category, include but are not limited to:

- i. Roofing Systems repair or replacement,
- ii. Building Interior/Exterior Components repair, remodel/upgrade,
- iii. Building HVAC Systems replacement,
- iv. Building Electrical & Communication Systems modernization,
- v. Building Plumbing Systems replacement,
- vi. Building/Facility Fire Protection & Security Systems replacement/modernization,
- vii. O&M Shop Support Equipment/Systems replacement/modernization, and
- viii. Facility Pavement & Grounds repairs/replacement & upgrades.

F. Supervisory Control and Data Acquisition (SCADA): Improvements, modifications, replacements, repairs, additions, or modernizations of SCADA system and associated hardware and software identified on the Ten-Year Plan with a total replacement cost (including labor) greater than **\$20,000**.

G. NOTES:

- i. Each Reserve Category requires the development and management of a specific Ten-Year Plan for the category's replacement, additions, rehabilitation, and modernization needs.
- ii. These cost thresholds will apply beginning on the Effective Date of the SLDMWA OM&R Cost Recovery Plan. Prospectively, during the annual budget development process, staff will work with the OM&R Technical

Committee to evaluate any necessary increases to the cost thresholds, utilizing the USBR Operations and Maintenance Cost Index and other available tools.

2. Emergency Reserves: SLDMWA will establish and maintain an Emergency Reserve Fund consistent with Article 14 of the SLDMWA Transfer Agreement.
3. Other: The Finance & Administration Committee may recommend necessary changes to the Reserve Categories or the accumulation of additional Reserve funds (e.g. to fund debt/financed OM&R Costs).

DRAFT

EXHIBIT D

CONTRACTOR SERVICE (DELIVERY) AREAS

	Upper DMC	Lower DMC	Mendota Pool	San Felipe	San Luis Joint Use
Banta-Carbona Irrigation District	X				
Del Puerto Water District	X				
Patterson Water District	X				
Byron Bethany Irrigation District	X				
West Stanislaus Irrigation District	X				
City of Tracy	X				
Santa Nella County Water District	X				X
Eagle Field Water District		X			
Mercy Springs Water District		X			
Oro Loma Water District		X			
Pacheco Water District		^			X
Panoche Water District		X			X
San Luis Water District	X	X	X		X
City of Dos Palos					X
State of California, Mendota Wildlife Area	X	X	X		
Fresno Slough Water District			X		
Tranquillity Public Utility District			X		
James Irrigation District			X		
Laguna Water District			X		
Reclamation District #1606			X		
Coelho Family Trust			X		
Tranquillity Irrigation District			X		
Westlands Water District			X		X
Santa Clara Valley Water District				X	
San Benito County Water District				X	
Exchange Contractors					
Central California Irrigation District	X	X	X		
Firebaugh Canal Company		X	X		
Columbia Canal Company			X		
San Luis Canal Company			X		
City of Coalinga					X
City of Avenal					X
City of Huron					X
Refuge	X	X	X		X
Meyers Farm Family Trust			X		
Dudley-Indart (CGH) (incl. Robinson Family Farms LP, Vista Verde Farms)			X		
Kenneth & Karen Carvalho Trust			X		

**~~FIRST-SECOND~~ AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING BETWEEN
FRIANT WATER ~~USERS~~ AUTHORITY AND
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
RELATING TO ALLOCATION, COLLECTION, AND PAYMENT OF
OPERATION, MAINTENANCE, ~~AND~~ REPLACEMENT COSTS FOR
WATER DELIVERED THROUGH
CERTAIN CENTRAL VALLEY PROJECT FACILITIES**

This ~~First-Second~~ Amended and Restated Memorandum of Understanding is made effective as of [DATE], by and among the Friant Water ~~Users~~ Authority (“FWA”), a joint powers agency of the State of California organized and existing pursuant to Government Code Section 65000, *et seq.* and the San Luis & Delta-Mendota Water Authority (“SLDMWA”), a joint powers agency of the State of California organized and existing pursuant to Government Code Section 65000, *et seq.*, and amends and restates the First Amended and Restated Memorandum of Understanding made and entered into by the parties effective as of ~~March-September 1, 1998~~2002.

DEFINITIONS

As used ~~herein~~ this MOU, the following terms have the meanings indicated below. Terms with their initial letters capitalized but not defined below have the same meanings ascribed to them in the FWUA Transfer Agreement and the SLDMWA Transfer Agreement.

- ~~1. CVP Contractors: Parties that receive water pursuant to Water Delivery Contracts or that receive Other Water as such said terms are defined in Article 1 of the SLDMWA and FWUA Transfer Agreements.~~
- ~~2.~~
 1. Extraordinary OM&R: As used in this MOU, Extraordinary OM&R has the same meaning as the non-capitalized term included in the definition of OM&R in the SLDMWA Transfer Agreement. That is, the performance, funding, and financing of emergency or unusual operation and maintenance or extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs to the extent such costs are not considered Capital Improvement costs (as defined in the SLDMWA Transfer Agreement) unless SLDMWA chooses to accomplish and finance such Capital Improvements under Article 5(b) of its Transfer Agreement.
2. Friant Division Contractors: CVP-Water Delivery Contractors receiving water service from the Friant Division of the Central Valley Project (“CVP”), including members and non-members of ~~the FWUA~~.
3. FWUA: ~~The~~ Friant Water ~~Users~~ Authority.

4. FWUA Transfer Agreement: That certain Agreement Between the United States of America and Friant Water Authority for the to Transfer of the Operation, Maintenance and Replacement, and Certain Financial and Administrative Activities Related to of the Friant-Kern Canal and Related-Associated Works-between the Friant Water Users Authority and the United States of America- effective October 5March I, 19982020, as it may be amended.
5. Memorandum of Understanding or "MOU": This Second Amended and Restated Memorandum of Understanding-Agreement.
6. OM&R: Operation, maintenance and replacement as that phrase is defined in the SLDMWA Transfer Agreement Extraordinary OM&R-
- ~~7. : Tto the extent such costs are not considered Capital Improvement costs (as defined in the SLDMWA Transfer Agreement) unless SLDMWA chooses to accomplish and finance such Capital Improvements under Article 5(b) of its Transfer Agreement.~~
7. OM&R Budget: -SLDMWA's annual budget to fund the OM&R Program, which is developed and approved in accordance with the procedures set forth in Article 12(a) of the SLDMWA Transfer Agreement.

8. OM&R Costs: Costs of providing OM&R for the Project Facilities pursuant to the SLDMWA Transfer Agreement, including without limitation conveyance pumping costs associated therewith.
9. OM&R Program: All activities of the-SLDMWA required for the OM&R of the Project Facilities pursuant to the SLDMWA Transfer Agreement, including but not limited to, the program of work to be performed, the preparation and adoption of budgets, funding (including establishment of reserves and creation of debt), purchasing, auditing, inspections, cost recovery methodology, and administrative responsibilities.
- ~~9.2. OM&R Budget: SLDMWA's annual budget to fund the OM&R Program which is developed and approved in accordance with the procedures set forth in Article 12(a) of the SLDMWA Transfer Agreement.~~
10. Party Entitled to Utilize or Receive Other Water: A party required to pay SLDMWA the amounts described in Article 12 of the SLDMWA Transfer

Agreement in connection with the delivery of “Other Water,” as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.

~~10.11.~~ Project Facilities: The physical works and appurtenances associated with the Tracy C.W. “Bill” Jones Pumping Plant (formerly Tracy Pumping Plant), C.W. “Bill” Jones Pumping Plant Operations and Maintenance Complex, the Delta-Mendota Canal, Delta-Mendota Canal – California Aqueduct Intertie Pumping Plant (“Intertie”), Kesterson Reservoir, the O’Neill Pumping/Generating Plant and Switchyard, the federal share of the O’Neill Forebay, ~~the~~ Mendota Pool¹, the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities, and the San Luis Drain; this term ~~is intended to encompass the same~~ includes the facilities defined as the “Project Works” in the SLDMWA Transfer Agreement.

~~11.12.~~ Reserves: Funds accumulated to meet unexpected emergencies or planned multi-year financial commitments of Extraordinary OM&R and/or capital improvement projects to replace or repair Project Facilities and equipment that are not included in the annual costs of ongoing, regular, or routine operations, maintenance, repairs, replacements, and other activities and actions necessary for continued structural integrity and operational reliability of Project Facilities required for the delivery of “Project Water,” as defined in the SLDMWA Transfer Agreement.

~~12.13.~~ Settlement Contractors: Those contractors listed ~~in~~ the attached Exhibit A entitled to receive water service through the Project Facilities without charge, ~~-~~ except as provided in the OM&R Cost Recovery Plan.

14. Settlement Water: Water the Settlement Contractors are entitled to receive without charge from Project Facilities.

~~13.15.~~ SLDM Contractors: ~~CVP~~ Water Delivery Contractors that receive water (water other than Settlement Water) via any of the Project Facilities described in the SLDMWA Transfer Agreement.—

~~14.16.~~ SLDMWA: ~~The~~ San Luis & Delta-Mendota Water Authority.

~~15.17.~~ SLDMWA Cost Recovery Plan: The cost allocation methodology described ~~in~~

¹ As Mendota Pool is a non-Federal facility, SLDMWA’s operational responsibilities related to Mendota Pool are limited to those activities specifically required to fulfill the legal or contractual obligations of the United States. - Unless undertaken pursuant to ~~under~~ separate agreements with beneficiaries that will bear the cost, SLDMWA does not conduct additional operation, maintenance, or replacement activities for Mendota Pool.

the attached Exhibit B, also referred to as the “Cost Recovery Plan.”

~~16-18.~~ SLDMWA Transfer Agreement: That certain Agreement Between the United States of America and San Luis & Delta-Mendota Water Authority to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the San Luis and Delta-Mendota Canals, Traey C.W. “Bill” Jones Pumping Plant, Delta-Mendota Canal/California Aqueduct Intertie Pumping Plant, and O’Neill Pumping/Generating Plant, San Luis Drain and Associated Works ~~between the San Luis & Delta Mendota Water Authority and the United States of America~~ effective March January 14, 2020, 1998. as amended.

19. USBR: United States Department of the Interior, Bureau of Reclamation.

20. Water Delivery Contract: (1) Any contract entered into by the Secretary of the United States Department of the Interior under the provisions of Sections 9(c), 9(d), or 9(e) of the Reclamation Project Act of 1939 or Section 3404 of the Central Valley Project Improvement Act pursuant to which “Project Water” is to be supplied from or through Project Facilities and (2) any exchange contract, water rights settlement contract, or similar agreement pursuant to the terms of which water is to be supplied by the United States from or using the Project Facilities, as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.

~~17-21.~~ Water Delivery Contractor: A party holding a Water Delivery Contract with the United States, as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.

RECITALS

1. Since March 1, 1998, the costs of operating, maintaining and replacing certain ~~Central Valley Project (the “CVP”)~~ conveyance facilities and the San Luis Drain, and the costs of conveyance pumping, no longer have been funded by the USBR through federal appropriations and instead are being funded pursuant to those certain ~~Agreements~~ agreements to for the Ttransfer of the oOperation, mMaintenance and Rreplacement, and certain fFinancial and aAdministrative aActivities (the “Transfer Agreements”) entered into between USBR and (i) ~~the~~ SLDMWA, (ii) ~~the~~ FWUA, and (iii) ~~the~~ Madera Irrigation District and ~~the~~ Chowchilla Water District, and the October 1, 1996 Transfer Agreement between the USBR and the Tehama-Colusa Water Authority, respectively (referred to as the “Conveyance Contractors”), except that the USBR has entered into, or agreed to enter into, other appropriate legal instruments to fund OM&R Costs for Water DeliverCVPy Contractors thatwhich have a

deficiency, as that term is defined in Article 1+2(c) of the SLDMWA and FWUA Transfer Agreements, in payment to the Conveyance Contractors.

2. The Conveyance Contractors have agreed to the principle that in operating under their respective Transfer Agreements, the Conveyance Contractors will replace the USBR's historic CVP-wide pooling of costs of operating, maintaining and replacing CVP conveyance facilities with direct funding by each Conveyance Contractor to cover the operation, maintenance, and replacement ~~and maintenance~~ costs of the facilities assumed by each pursuant to their respective Transfer Agreements.

3. Pursuant to the terms of the SLDMWA Transfer Agreement, the cost of OM&R of —CVP conveyance facilities and the San Luis Drain, and the costs of conveyance pumping for water delivered through the Project Ffacilities will be funded by ~~the~~ SLDMWA, and ~~the~~ SLDMWA will establish budgets and methods for direct recovery of OM&R Costs of such facilities from the CVP-Water Delivery Contractors and Parties Entitleds to Receive or Utilize Other Water receiving such water.

1.4. Because certain deliveries of San Joaquin River water to Friant Division Contractors are dependent upon the delivery of Settlement Water to the Settlement Contractors, those Friant Division Contractors have a critical interest in the OM&R of the Project Facilities and have agreed to pay the O&M&R Costs incurred by ~~the~~ SLDMWA under the SLDMWA Transfer Agreement associated with the delivery of the Settlement Water as determined in accordance with this MOU.

2.5. FWUA, by virtue of the FWUA Transfer Agreement, is willing to apportion among and collect from the Friant Division Contractors the OM&R Costs incurred by ~~the~~ SLDMWA in delivering Settlement Water and other types of water that may be agreed to for which ~~the~~ FWUA is responsible on behalf of the Friant Division Contractors under this MOU and remitting the same to ~~the~~ SLDMWA, all in accordance with the terms of this MOU.

AGREEMENT

The parties hereby enter into this MOU ~~Memorandum of Understanding for the purposes set forth herein,~~ based upon the facts and definitions stated above, and for the purposes and upon the terms and conditions set forth below, to wit:

I. PURPOSES OF THE MOU

The purposes of this MOU are as follows:

A. To establish the standards for OM&R of the Project Facilities by ~~the~~ SLDMWA, and to set forth certain assurances relating thereto;

B. To establish the methodology for allocating and recovering OM&R Costs;

C. To establish the process for remittance by ~~the FWUA~~ to ~~the~~ SLDMWA of payments collected from the Friant Division Contractors for OM&R Costs allocable to the Friant Division Contractors under this MOU;

D. To establish the principles for ~~and rights of input and~~ participation in decision-making by ~~the FWUA~~ in the OM&R Program, which including includes providing input, and as applicable voting, on cost allocation, collection and payment procedures, and budgeting;

E. To establish the process of resolution of any disputes that may arise in the implementation of this MOU; and

F. To establish the conditions or events which would trigger renegotiation and/or renegotiation of this MOU.

II. STANDARD FOR OM&R OF THE PROJECT FACILITIES

The OM&R Program ~~will shall~~ comply with the standards set forth in the SLDMWA Transfer Agreement; provided, that the OM&R Costs ~~may will shall~~ not exceed those which are reasonably necessary to OM&R the Project Facilities in accordance with such standards. -The parties mutually acknowledge that there are items of deferred maintenance which must be performed on the Project Facilities in order for the OM&R Program to meet the applicable standards, and nothing in this paragraph is intended to preclude the performance of those deferred maintenance items or the equitable development of reserves in accordance with this MOU which will permit the OM&R of the Project Facilities in the future in accordance with the SLDMWA Transfer Agreement.

III. DEVELOPMENT OF COST RECOVERY METHODOLOGY

A. -Cost Recovery Methodology for OM&R Costs

1. Principles of Cost Allocation. -The OM&R Costs in which ~~the FWUA~~ will share ~~will shall~~ be allocated to OM&R activities in accordance with (i) generally accepted accounting principles and (ii) the SLDMWA Cost Recovery Plan, which ~~will shall~~ be applied consistently for all OM&R activities of ~~the~~ SLDMWA. To the extent the allocation of the costs for specific acquisitions or OM&R activities is not addressed by the SLDMWA Cost Recovery Plan, such costs ~~will shall~~ be allocated in a manner consistent with the following principles, also contained in the SLDMWA Cost Recovery Plan:

a) Except where expressly noted otherwise, Friant Division Contractors are responsible for paying OM&R Costs for Project Facilities used for the delivery of Settlement Water to the Settlement Contractors in accordance with the terms of this MOU;

b) Water rates will be comprised of various cost pool components based on the principle that OM&R Costs are allocated to water deliveries based on the Project Facilities used for such deliveries; and

c) All Water Delivery Contractors and Friant Division Contractors have a critical interest in the effective and efficient OM&R of the Project Facilities.

~~;~~ ~~provided, that if~~ the actual use of Project Facilities, including any subsequently ~~such~~-acquired property or facilities, ~~use~~ proves to be materially different from the use that ~~is~~ anticipated, appropriate adjustments will shall be made in order to more accurately reflect an appropriate allocation of OM&R Costs~~such costs~~.

2. Reserves. Reserves for Eextraordinary OM&R, capital replacement, emergencies, and other appropriate purposes will shall be established in accordance with the SLDMWA Transfer Agreement and the SLDMWA Cost Plan. Only items meeting the criteria attached hereto as Exhibit C (the "Reserve Criteria") will shall constitute Reserves in which ~~the FWUA~~ must participate for purposes of this MOU.

3. Disbursements of Interest or Reserves. While it is anticipated that all amounts paid by ~~the FWUA~~ to ~~the~~ SLDMWA under this MOU and any associated interest earnings will be retained by ~~the~~ SLDMWA and utilized to support the eontinued OM&R Program, in the event of any distributions of interest or of Reserves, such distributions will be made to the parties providing the funds being distributed or the funds on which the interest to be distributed was earned, including ~~the FWUA~~.

4. Miscellaneous Revenues. The parties ~~It is anticipated~~ that ~~the~~ SLDMWA may from time to time realize miscellaneous revenues from sources directly related to the OM&R Program, including without limitation revenues from (i) rebates from vendors of products and/or services used in the OM&R Program, (ii) the sale of used equipment originally acquired for use in the OM&R Program, and (iii) amounts collected from third parties for whom ~~the~~ SLDMWA performs contract services using employees, equipment and/or materials otherwise used in the OM&R Program. All such miscellaneous revenues will be retained by ~~the~~ SLDMWA and utilized to support the continued OM&R Program, as an offset to budgeted OM&R Costs that would have been allocated to Friant Division and SLDM Contractors.

IV. ALLOCATION, COLLECTION AND REMITTANCE OF COSTS BY FWUA

A. Recovery from Friant Division Contractors

~~The FWUA~~ will shall, as a part of the FWUA cost recovery methodology developed under the FWUA Transfer Agreement, provide for the recovery of OM&R Costs allocated to Settlement Contractors under the SLDMWA Cost Recovery Plan, which OM&R Costs are to be paid by Friant Division Contractors. To the extent the USBR has conferred upon ~~the FWUA~~ the

legal authority to do so, ~~the FWUA will shall~~ allocate such costs among, and collect such costs from, the Friant Division Contractors, and ~~will shall~~ promptly remit such costs to ~~the~~ SLDMWA.

B. Remedies for Non-Payment or Delinquent Payment

In the event of any non-payment or delinquent payment to ~~the~~ FWUA by a Friant Division Contractor of amounts to be collected by ~~the~~ FWUA and remitted to ~~the~~ SLDMWA under this MOU, ~~the~~ FWUA ~~will shall~~ diligently exercise its available remedies, (whether under Article 121 of the FWUA Transfer Agreement, or under California law), in a manner ~~the~~ FWUA reasonably believes is most likely to result in the prompt collection and remittance of such amounts to ~~the~~ SLDMWA. If ~~the~~ FWUA is unable to collect and remit any amount owing from the delinquent Friant Division Contractor before the last day of the month before the scheduled month of delivery (whether from such Friant Division Contractor or from the USBR via offset or direct payment), or if FWA fails to promptly remit to SLDMWA all amounts received from any Friant Division Contractor, the USBR ~~will shall~~ be deemed to have directed ~~the~~ SLDMWA to deliver or convey Settlement Water despite a delinquency under Article 121 of the SLDMWA Transfer Agreement, and the United States ~~will shall~~ be liable to ~~the~~ SLDMWA for the costs to be recovered on account of such Settlement Water under this Agreement; provided, that ~~the~~ FWUA ~~will shall~~ also continue to diligently exercise its available remedies in the manner ~~the~~ FWUA reasonably believes is most likely to result in the prompt collection and remittance of such amounts to ~~the~~ SLDMWA. Nothing contained in this MOU authorizes ~~the~~ SLDMWA to terminate Settlement Contractor deliveries in the event of delinquencies in payment by the Friant Division Contractors.

V. FWUA INPUT AND PARTICIPATION IN SLDMWA OM&R ACTIVITIES

A. FWUA Participation

~~The~~ FWUA ~~will shall~~ participate in SLDMWA decision-making relating to the OM&R of the Project ~~F~~facilities and the OM&R Program through representation and voting on the SLDMWA Board of Directors, Finance and Administration Committee, ~~and the~~ OM&R Technical Subcommittee, and the OM&R-Planning Committee.

1. Board of Directors. ~~The~~ FWUA ~~will shall not, by virtue of this MOU,~~ be entitled to limited representation on the SLDMWA Board of Directors ~~through a single seat, in that the FWA representative may vote on any action item funded, in whole or in part, from any OM&R fund or Reserves to which Friant Division Contractors have or will have contributed and this MOU shall not be deemed to alter the authority of the SLDMWA Board of Directors to adopt and amend budgets for the conduct of SLDMWA business, including for OM&R of the Project Facilities.~~

2. Finance and Administration Committee. ~~The~~ FWUA ~~will shall~~ be entitled

to one of eight positions on the Finance and Administration Committee ("FAC"), with the right to vote on all OM&R budgetary matters. The FAC is an advisory committee to the Board of Directors. A recommendation of the FAC to the Board of Directors to adopt or amend the OM&R Budget will shall be adopted by the "yes" vote of at least 5 of 8 members. The FWUA representative and an alternate will shall be ~~selected~~ appointed by ~~the SLDMWA Chairman upon recommendation from the FWUA,; and The an-FWA~~ alternate representative will shall be appointed to participate and may to cast the vote of FWUA in the absence of the primary-FWA representative, or in case such representative is barred from voting due to conflict of interest.

3. OM&R Technical Committee. ~~The FWUA will shall~~ be entitled to one of ~~ten~~ positions on the OM&R Technical Committee, with the right to vote on all matters. The OM&R Technical Committee is a subcommittee of the FAC and is advisory to the FAC and the Board of Directors. As long as this MOU is in effect, the OM&R Technical Committee will shall be comprised of the following members, with no Water CVP-Delivery Contractor entitled to have more than one representative on such committee at any time:

Contractors served from the Mendota Pool	1
Contractors served from the Lower DMC	1
Contractors served from the Upper DMC	1
Contractors served from the San Luis Canal (1 from Westlands + 1 from others)	2
Contractors served from the San Felipe Division	1
Exchange Contractors	1
FWUA (appointed by SLDMWA Chairman as recommended by FWUA)	<u>1</u>
USBR (appointed by SLDMWA Chairman as recommended by USBR)	<u>1</u>
SLDMWA Technical Staff	1

One alternate will shall be appointed for each such representative, and each such alternate will shall participate and cast the vote of the represented party in the absence of such party's the primary representative or in case the representative is barred from voting due to conflict of interest.

The SLDM and Settlement C contractors in each of the above-referenced service areas are listed ~~in~~ the attached Exhibit D.

A recommendation of the OM&R Technical Committee to the FAC to adopt or amend OM&R Budget levels will shall be adopted by the "yes" vote of at least 8 of 10 members. ~~The FWUA representative and alternate will shall be appointed by the SLDMWA Chairman upon recommendation from the FWUA,; and the FWUA alternate representative will shall be appointed in the same manner.~~ At any point in the budget approval process, a budget or a budgetary issue may be remanded back to the OM&R Technical Committee, which will shall

diligently meet to reconsider the matter and provide its recommendation.

4. ~~OM&R Planning~~ Planning Committee. The ~~OM&R Planning~~ Planning Committee is a subcommittee of the FAC and is advisory to the FAC and the Board of Directors.

a) FWA will be entitled to one of six voting positions on the ~~OM&R Planning~~ Planning Committee, with the right to vote on all matters. As long as this MOU is in effect, the ~~OM&R Planning~~ Planning Committee will be comprised of the following members, with no Water Delivery Contractor entitled to have more than one representative on such committee at any time:

<u>SLDMWA Division 1</u>	<u>1</u>
<u>SLDMWA Division 2</u>	<u>1</u>
<u>SLDMWA Division 3</u>	<u>1</u>
<u>SLDMWA Division 4</u>	<u>1</u>
<u>SLDMWA Division 5</u>	<u>1</u>
<u>FWA²</u>	<u>1</u>

One alternate will be appointed for each such representative, and each such alternate will participate and cast the vote of the represented party in the absence of such party's ~~primary~~ representative or in case the representative is barred from voting due to conflict of interest.

b) In addition, the ~~OM&R Planning~~ Planning Committee will include five non-voting members, including the following:

<u>SLDMWA staff/consultant representative</u>	<u>1</u>
<u>FWA staff/consultant representative</u>	<u>1</u>
<u>USBR representative</u>	<u>1</u>
<u>SLDMWA technical representative</u>	<u>1</u>
<u>FWA technical representative</u>	<u>1</u>

The non-voting members will not count in the calculation of a quorum.

c) The ~~OM&R~~ Planning Committee will review, evaluate, and establish a recommendation for the allocation of costs of any Extraordinary OM&R project for which SLDMWA's ~~estimated budget~~ total project cost is greater than 50% of the current year's routine OM&R Budget, ~~excluding power and Reserves costs~~. The ~~OM&R Planning~~ Planning Committee's cost allocation recommendation will be informed by preparation of a beneficiary analysis that will provide supply benefits broken down by water service type and contractor. ~~The anticipated b~~Benefits to be analyzed will be comprised of two components: 1) attributable water

²The FWA representative will be appointed by the SLDMWA Chair, as recommended by FWA.

supply direct benefits (water entitlements and priority of service), including increases in water deliveries due to an Extraordinary OM&R project, and 2) system-wide indirect benefits, including economic considerations.

d) The OM&R Planning Committee should be involved in review of a potential Extraordinary OM&R project as early as possible in order to make a cost allocation recommendation so that prudent and cost-effective decisions related to the proposed Extraordinary OM&R projects can be made on a timely basis. As the owner of the Project Facilities, USBR will be consulted on proposed Extraordinary OM&R projects involving such Facilities given its independent role in developing project feasibility studies and environmental documents.

e) Initial cost allocation recommendations from the OM&R Planning Committee require a unanimous vote by all members present. If, after exploring various solutions to achieve unanimity, members who represent agencies that are not proposed to be allocated the Extraordinary OM&R project costs continue to object to the proposed findings or recommendation, such members' objection will not preclude a recommendation moving forward from the OM&R Planning Committee provided that all remaining members of the committee representing agencies that will be allocated Extraordinary OM&R project costs unanimously approve the findings and recommendation.

f) Once a recommendation on cost allocation has been made by the OM&R Planning Committee, the recommendation will be forwarded to the FAC for its consideration and/or possible recommendation to the SLDMWA Board of Directors. If the FAC proposes any "material change(s)"³ to the OM&R Planning Committee recommendation, the proposed material change(s), including a summary of the reasons for the change(s), must be referred back to the OM&R Planning Committee for review.

g) Upon receipt of a proposed material change(s) to an initial recommendation, the OM&R Planning Committee can 1) concur in the FAC's proposed material change(s), 2) unanimously support revisions to the material change (including reasons why the OM&R Planning Committee recommendation is preferable to the FAC-proposed material change), or, 3) if unanimous support or revisions cannot be agreed to, the original OM&R Planning Committee recommendation will stand, and the OM&R Planning Committee recommendation will be sent, along with the separate FAC recommendation, to the SLDMWA Board of Directors for action.

h) The Planning Committee's review of and response to the FAC-proposed material change(s) must occur within thirty (30) days of any

³ For the purposes of this Section V.A.4, a "material change" is one that would increase the overall costs of the Extraordinary OM&R project by more than 10% based on the engineer's estimate, or increase the project costs allocated to any participating OM&R payor by more than 10%.

referral from the FAC, unless the FAC agrees to a longer review and response period.

i) Initial cost allocations related to an Extraordinary OM&R project that the Planning Committee has reviewed will be periodically reviewed by the OM&R Planning Committee, FAC, and/or SLDMWA Board of Directors to determine if changes in allocated costs are warranted.

4.5. SLDMWA Committee Structure. All matters pertaining to the OM&R Budget and the OM&R Program will shall be addressed by the FAC, and/or OM&R Technical Committee, and/or OM&R Planning Committee, for matters within their respective jurisdiction. ~~The~~ SLDMWA will shall not alter that delegation of responsibility or the structure/composition of ~~the~~ at committees and-or subcommittees while this MOU is in effect without the consent of ~~the~~ FWUA; provided, that ~~the~~ FWUA will shall not withhold such consent in the event ~~the~~ SLDMWA wishes to form new committees or subcommittees to deal with OM&R budgetary and/or OM&R Program matters if ~~the~~ FWUA is entitled to participate on such committees or subcommittees by representation and with voting rights that are equivalent to the rights described in this MOU. Reorganizations of committee structure that do not affect ~~the~~ FWUA participation on OM&R budgetary and/or OM&R Program matters, such as splitting off a Administrative matters or other non-OM&R budgets, will shall not be affected by the terms of this MOU.

B. Provision of Information

~~The~~ SLDMWA will shall share with ~~the~~ FWUA in a timely manner all relevant information available regarding SLDMWA OM&R Budgets; actual OM&R Costs incurred, including but not limited to power costs; water deliveries; and all similar information that affects the OM&R Budget, the OM&R Program, the SLDMWA Cost Recovery Plan, and adjusting estimated costs to actual. All such information will shall be provided to ~~the~~ FWUA at the same time it is provided to all other members of the Board of Directors or members of any committee or subcommittee as part of a regular or special meeting, and if a separate request for information is made by FWA representatives outside of any board, committee or subcommittee meeting, such information will be provided as soon as reasonably practical.

1. Reports. ~~The~~ SLDMWA will shall provide such information by means of its ~~final~~ draft and final Budgets and any Budget Addenda on OM&R; monthly Financial Report, including budget-to-actual expenditures; USBR and/or SLDMWA Water Delivery Reports; and such other reports as may be developed for such purposes from time to time.

2. Access. ~~The~~ FWUA will shall be afforded access to inspect SLDMWA records on the same terms as are provided to the USBR pursuant to Article 154(a) of the SLDMWA Transfer Agreement.

C. Notices and Meeting Dates

~~The~~SLDMWA will~~shall~~ give ~~the~~FWUA, its designated representatives and the designated alternate for each timely notice of all meetings of the Board of Directors, FAC, and OM&R Technical Committee, and OM&R Planning Committee. All information and notices provided to ~~the~~FWUA by ~~the~~SLDMWA will~~shall~~ be provided in at least the same detail, and at the same time, as the comparable information and notices provided to SLDMWA members or their representatives participating in the same decision-making. To facilitate FWUA participation as described herein, ~~the~~SLDMWA will~~shall~~ use its best efforts to establish regular meeting dates for meetings of the Board of Directors, committees, and subcommittees that deal with the OM&R Program or any OM&R-related issue on dates that do not conflict with regularly-scheduled FWUA meeting dates, to coordinate meeting dates for special meetings of such committees or subcommittees with the schedules of FWUA representatives, and to permit ~~the~~FWUA to participate by telephone or other electronic means, and ~~the~~FWUA will~~shall~~ use best efforts to make its representatives available for such participation.

VI. RESOLUTION OF DISPUTES

A. Process

Disputes relating to interpretation or performance of this MOU will~~shall~~ be resolved according to the process described in this Article.

1. Informal Dispute Resolution. Should any dispute arise between ~~the~~SLDMWA and ~~the~~FWUA concerning any matter that is the subject of this MOU, the party raising the disputed issue must~~shall~~ promptly give written notice ("Dispute Notice") to the other party, and the parties shall thereafter diligently meet and confer in good faith in an effort to resolve the issue. The Dispute Notice shall~~must~~ contain the date or general period the dispute arose, a detailed~~n~~ explanation of the issue (including proposed resolution of the issue), and the name and contact information, address and telephone and fax numbers of the disputing party's representative who should be contacted by the responding party. The parties must schedule and participate in an initial meeting no later than thirty (30) days from the date of the Dispute Notice, and if the issue is not resolved at the initial meeting, the parties must thereafter continue to engage in good faith efforts to resolve the issue at the earliest opportunity. Each party shall~~must~~ make available, at such party's expense, such policy-level staff members, technical staff, consultants, or Board members as are reasonably necessary to the equitable and expedient resolution of the issue. At any time during this process, either party may request that the Regional Director of the USBR participate in the process to facilitate the resolution, and the other party will~~shall~~ accept such participation if it is provided. In the event the parties have not reached agreement on resolution of the disputed issue within ninety (90) days of the date of the Dispute Notice, or such extended period as the parties may mutually agree to, either party may pursue the remedies described in Section VI.A.2 or 3, as applicable.

2. Alternative Dispute Resolution. At any time during the informal dispute resolution process described in Section VI.A.1 above, or following the expiration of the time period established for such process, either party may propose a form of alternative dispute resolution (“ADR”) such as mediation or arbitration to resolve the dispute. The utilization of such voluntary ADR process will require mutual agreement as to the specifics of the process, and the decision as to whether to utilize such voluntary ADR process in the first place and the details of such process will be at the sole discretion of the parties. The parties will endeavor, where applicable, to select a mediator or arbitrator with general familiarity with the OM&R of water conveyance facilities and the CVP. The decision by any party not to utilize ADR or the inability to agree upon the specifics of an ADR process will not constitute bad faith under this MOU.

3. Resolution by USBR, through Trial by Reference. In the event the parties have not reached agreement on resolution of the disputed through informal dispute resolution within the time period issue by the first anniversary 90 days of the date of the notice described in Section VI.A.1., with or without the assistance of the Regional Director as facilitator, or through the voluntary utilization of ADR under Section VI.A.2, then the dispute will be determined by the Regional Director using the following procedure either party may pursue a formal dispute determination from the Regional Director, USBR, file suit in the Superior Court of Fresno County for proceedings in accordance with Section 638 et seq. of the Code of Civil Procedure; provided that the procedure for such reference shall be modified as follows:

a) Within fifteen (15) days after the expiration of the period for informal dispute resolution and after the termination of any ADR proceedings, the parties will request in writing a determination of the dispute by the Regional Director (“Request for Dispute Determination”).

b) Upon receipt of a Request for Dispute Determination, the Regional Director, with non-binding input from the parties, will select a panel of USBR personnel (“Panel”) with appropriate financial, operational, policy, or technical backgrounds to assist in the resolution of the dispute.

c) The Regional Director, in coordination with the parties, will set dates for the submission of position papers on the dispute (including page limitations) and for the parties to present their positions to the Regional Director and the Panel. Unless the parties agree otherwise, the meeting at which the parties present their positions must take place within sixty (60) days of the date of submission of the Request for Dispute Determination.

d) Within sixty (60) days of the meeting at which the parties present their positions, or such other reasonable date as may be agreed upon by the parties and USBR, the Panel will prepare an analysis and recommendation on the dispute and the Regional Director, upon review of such recommendation and following an opportunity to request any additional information or to have any additional meetings with the parties, will issue a final written decision

on the dispute. Nothing in this MOU is intended to or will limit the discretion of the Regional Director to apply applicable Reclamation law, policies or procedures, where appropriate, in resolving any disputes submitted by the parties under this Section VI.A.3.

e) The Regional Director's determination will constitute a final written determination of the Contracting Officer pursuant to Article 10 of the parties' existing Transfer Agreements, and the parties must promptly comply with the determination until the same is stayed, reversed, or modified by a decision of a court of competent jurisdiction. Any challenge to the Regional Director's determination must be filed in federal court within sixty (60) days thereafter, and such determination will be subject to judicial review under the applicable standards of the federal Administrative Procedure Act (5 U.S.C. § 706). Except as set forth in Section VI.B, if the Regional Director's determination results in a payment obligation to either party, any such payment need not be made prior to the final resolution of any judicial proceedings commenced in accordance with this subsection.

f) If the Regional Director's determination under Section VI.A.3.e results in a payment obligation to either party, and an appeal is not timely filed in federal court, the following provisions will apply:

1. If the Regional Director determines FWA owes payment to SLDMWA under the MOU, FWA must promptly pay the sums owed to SLDMWA, and until paid any such amounts will accrue interest at the same rate SLDMWA charges contractors for delinquent payments under this MOU. After sixty (60) days from the Regional Director's final decision, any unpaid amounts will be deemed a "deficiency" within the meaning of Article 12 of the SLDMWA Transfer Agreement.

2. If the Regional Director determines SLDMWA owes payment to FWA under the MOU, SLDMWA must promptly pay the sums owed to FWA, and until paid any such amounts will accrue interest at the same rate SLDMWA charges contractors for delinquent payments under this MOU. If after sixty (60) days from the Regional Director's final decision SLDMWA has not paid the sums owed FWA, then FWA may apply the total obligation as a credit towards any pending or future cost invoice to FWA until the obligation is fully offset.

g) The parties agree to share equally any costs imposed by USBR associated with the participation of the Regional Director and Panel personnel in the dispute resolution process under this Section VI.A.3.

~~a) Each party shall name one person to serve as referee within 10 days of the date of the Court's order granting the petition for reference, and within 10 days of their selection the two persons so named shall name a third person to serve as referee. If they are unable to agree on a third person, the Court shall appoint the third person. All referees shall have general familiarity with the OM&R of water conveyance facilities and the CVP.~~

- b) ~~A hearing of the matter before the referees shall be conducted as expeditiously as possible.~~
- e) ~~The referees shall issue a draft report of their findings within 20 days after the testimony is closed.~~
- d) ~~Within 10 days after the date of mailing the draft report, any party may file objections to it with the referees.~~
- e) ~~If no objection is filed to the draft report, it shall be filed forthwith with the Court. If an objection to the draft report is filed, the referees shall file their final report with the Court within 20 days of the date the objection is filed.~~
- f) ~~The report of the referee shall be subject to review by the Court upon exception thereto being filed with the Court within 10 days after the filing of the final report by the referees; provided, no exception to the report shall be considered unless it appears that the matter of the exception was presented to the referees in the form of an objection. The Court shall bear the objection at the first available law and motion calendar at least 28 days after the exception was filed.~~
- g) ~~The report filed by the referee shall be prima facie evidence of the facts therein reported, but the Court may hear such evidence as may be offered by any party to rebut the report, and render the court's own decision.~~
- h) ~~If no objection to the referees' report is filed with the Court, the report of the referees upon the whole issue shall stand as the decision of the Court.~~

B. Disputes Causing Cash Flow Difficulties

The parties recognize that circumstances could arise in which the non-payment of amounts due by one party could create material cash flow difficulties for ~~one of the other~~ parties. In the event a dispute results in the non-payment of obligations owed to ~~the~~ SLDMWA by ~~the~~ FWUA or a demand from ~~the~~ FWUA for payment by ~~the~~ SLDMWA at such time or in such amount that the other party becomes unable to reasonably meet its cash flow needs, ~~through the terms of this MOU and Article II(e) of the SLDMWA Transfer Agreement or the FWUA Transfer Agreement, as applicable,~~ the affected party will ~~shall~~ not be obligated to pursue ~~the~~ informal ~~d~~Dispute ~~r~~Resolution or ADR described in Section A.1. of this Article VI for a period of longer than ten (10) days, after at which time the party it shall will be entitled to issue a Request for Dispute Determination to USBR under Section VII.A.3. In addition, in the event the Regional Director determines that a payment is due from a party, and if the party owed the payment needs the funds to reasonably meet cash flow needs, payment must be made promptly notwithstanding the pendency of any judicial proceedings to review the Regional Director's determination, subject to the reimbursement of the disputed payment amount if the Regional

Director's determination regarding a payment obligation is later set aside in whole or in part by a court. For the purposes of this subsection, the phrases "material cash flow difficulties" and "reasonably meet cash flow needs" means the applicable party lacks sufficient unrestricted funds to pay current costs owed without being able to collect the funds associated with the disputed matter. "Unrestricted funds" has the same meaning as categories of unrestricted cash as reported by each party in its annual, audited financial statements.~~commence a court proceeding pursuant to Section A.2. of this Article VI.~~

C. Status of Obligations During Pendency of Dispute

A. Payment Obligations. During the period of any dispute between the parties regarding annual OM&R Costs collected via water rates, FWA must pay all disputed annual OM&R Costs collected from Friant Division Contractors during the course of the dispute. With respect to disputed payment obligations for Extraordinary OM&R projects or cost allocations for projects for which the budget is greater than 50% of the current year's routine OM&R Budget, to the extent costs are imposed on SLDM Contractors during the first ninety (90) days following a Dispute Notice, FWA will pay all disputed costs collected into an escrow or trust account. If the dispute is not resolved within ninety (90) days, any funds deposited into the escrow or trust account will be paid to SLDMWA, and FWA must thereafter remit all disputed payments collected to SLDMWA, unless the parties agree otherwise affecting payment obligations under this MOU, any disputed payments shall continue to be made during the pendency of the dispute as they had been made prior to such dispute, and any changes resulting from the resolution of the dispute shall be implemented by retroactive adjustment of amounts paid to the date when the dispute arose, as indicated on the notice required in Section A.1. above, unless the parties agree upon an alternate adjustment period.

B. Changes to Payment Obligations Resulting from Resolution of Dispute. The resolution of any dispute for which a Dispute Notice is issued under Section VI.A will include an agreement between the parties (if resolved voluntarily) or a determination by USBR or a federal court as to the amount and timing of the retroactive adjustment or prospective adjustment, as applicable, in disputed payment obligations.

~~C.D.~~ Termination of Transfer Agreements

The parties acknowledge that they each have a right to terminate their respective Transfer Agreement on 12 months' notice under Article 2(c) thereof, and that a material dispute relating to the interpretation or performance of this MOU, or the unsatisfactory resolution thereof, could lead to such a termination. In order to facilitate mutually acceptable resolution of disputes and reduce the possibility of a termination of either the FWUA Transfer Agreement or the SLDMWA Transfer Agreement, the parties agree that neither of them will give notice of termination of a Transfer Agreement under Article 2(c) thereof for a period of at least 12-6 months after the date of the notice described in Section VI.A.1.~~of this Article VI~~; provided, that if matters unrelated to any such dispute arise which cause a party to desire termination, such notice may be sooner given.

VII. RENEGOTIATION PRINCIPLES

A. Basis for Agreement

This MOU, including the SLDMWA Cost Recovery Plan and Reserve Criteria, represents the parties' negotiated agreement on an equitable apportionment of the OM&R Costs ~~to be incurred by the~~ SLDMWA. In entering into this MOU, the parties have made assumptions that the that water supplies and operations of the parties' respective members will not materially change while this MOU is in effect and that there will be no material change in the use of or access to facilities utilized by the parties and their members after the effective date hereof this MOU. Further, they have assumed the accuracy of financial data provided and/or developed by the USBR and the SLDMWA in connection with the negotiation of this MOU, the SLDMWA Cost Recovery Plan and Reserve Criteria. The parties acknowledge that all such assumptions were material to their respective decisions regarding the provisions of this MOU, including to reach the agreements described herein, in the SLDMWA Cost Recovery Plan and in the Reserve Criteria, and agree that in the event any of those assumptions proves to be incorrect, or upon the occurrence of certain other events described in Section VII.B., renegotiation of this MOU, the SLDMWA Cost Recovery Plan, and/or Reserve Criteria is appropriate.

B. Events Triggering Renegotiation of MOU

In addition to the express provisions of this MOU that require consideration of potential amendments should certain events occur, Should a party conclude that this MOU, including the SLDMWA Cost Recovery Plan and Reserve Criteria, can and should be modified to address (i) such party's determination that one or more of the fundamental assumptions described in Section VII.A. was in error, (ii) an administrative or court order materially affecting the water supply or operations of one or more of the agencies comprising such party, or which makes it reasonably foreseeable that such agency(ies) will thereafter suffer a material and adverse change in its/their water supply or operations, or (iii) another significant event which makes it reasonably foreseeable that such party will bear a material increase in OM&R Costs on a per acre foot ("AF") basis, the parties commit to entering into negotiations in good faith and timely efforts to modify this MOU, the SLDMWA Cost Recovery Plan or Reserve Criteria, as applicable.

C. Inability to Reach Agreement on Modification of MOU

In the event a party seeks modification of this MOU pursuant to Section VII.A. ~~of this Article VII,~~ neither party will shall give notice of termination of its Transfer Agreement pursuant to Article 2(c) thereof for 126 months after the first negotiation date; provided, that if matters unrelated to the event giving rise to the party's request for modification of this MOU arise which cause a party to desire termination, such notice may be sooner given. Following such 126 month minimum period, either party will shall be free to exercise its right to terminate its Transfer

Agreement under Article 2(c) thereof if a mutually acceptable modification of this MOU has not been developed.

VIII. MISCELLANEOUS

A. Term of MOU

This MOU ~~will~~ remain in effect until it is terminated by the mutual agreement of the parties; provided, that this MOU ~~will~~ automatically terminate without further action of the parties upon the termination, as applicable, of either the FWA Transfer Agreement or the SLDMWA Transfer Agreement. ~~Upon any termination of this MOU, the SLDMWA Cost Recovery Plan will also terminate, although if the FWA Transfer Agreement terminates, SLDMWA would proceed in promptly developing a new cost recovery methodology.~~ In that regard, the parties acknowledge that the agreements described herein this MOU, and particularly the agreements contained in the SLDMWA Cost Recovery Plan, are part of a negotiated and comprehensive arrangement which reflects numerous compromises and tradeoffs by the parties. Accordingly, no aspect of this MOU or the SLDMWA Cost Recovery Plan is to be construed as precedent, and all aspects thereof must be renegotiated if this MOU is terminated.

B. Attorneys' Fees

In the event of any judicial action by any of the parties seeking enforcement or interpretation of any of the terms and conditions of this MOU, ~~including without limitation any action commenced under Article VI,~~ the prevailing party in such action ~~will~~ be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses including, without limitation, taxable costs and reasonable attorneys' fees.

C. Entire Agreement

This MOU and its exhibits contain all of the agreements of the parties ~~hereto~~ with respect to the subject matter hereof this MOU. No other prior agreement or understanding pertaining to any such matter ~~will~~ be effective for any purpose. No provisions hereof this MOU may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the parties ~~hereto~~.

D. Exhibits

This MOU includes Exhibit A, a list of Settlement Contractors; Exhibit B, the SLDMWA Amended OM&R Cost Recovery Plan; Exhibit C, Reserve Criteria; and Exhibit D, a list of SLDM Contractor Service (Delivery) Areas. The Parties anticipate that Exhibit A and Exhibit D may be amended by SLDMWA from time to time in coordination with USBR. Exhibit B may be amended consistent with Article Section VII of this MOU and pursuant to Article

12(b)(3) of the SLDMWA Transfer Agreement. Exhibit C may be amended consistent with ArticleSection ~~Section~~ VII of this MOU, and may include coordination with the OM&R Technical Committee and/or the Finance & Administration Committee during the annual OM&R Budget development process. Any and all such updated exhibits will be attached to this MOU and replace all prior versions of such exhibits.

E. Interpretation

The validity and interpretation of this MOU (including all exhibits) will be governed by the laws of the State of California. The MOU will be construed simply, as a whole, and in accordance with its fair meaning. The use of the singular includes the plural, and vice versa.

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

SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY

FRIANT WATER AUTHORITY

By: _____

Cannon Michael, Chair

By: _____

Jim Erickson, Chair

By: _____

Federico Barajas, Secretary

By: _____

Josh Pitigliano, Secretary

[SIGNATURE BLOCKS]

DRAFT

EXHIBIT A**SETTLEMENT CONTRACTORS**

The following contractors ~~are will~~ ~~shall be~~ entitled to receive, without charge, the designated acre feet of Settlement Wwater through the Project Facilities as stated below or as may be amended.

	Contract#	Acre Feet
Coelho Family Trust (Formerly Mason A. Loundy Trustee)	14-06-200-7859A	1,332
State of California, Dept. of Fish & Game (Mendota Wildlife Area) (Formerly Mason A. Loundy Trustee)	14-06-200-7859A Assign 1	1,321
State of California (Mendota Wildlife Area)	14-06-200-4359A AMD1	1,143
San Joaquin River Exchange Contractors Water Authority: <ul style="list-style-type: none"> • Central California Irrigation District • Columbia Canal Companyy • San Luis Canal Companyy • Firebaugh Canal Company 	llr-1144	840,000
Fresno Slough Water District	14-06-200-40 19A	866
Tranquillity Public Utility District (Formerly Hughes, Melvin & Mardella)	14-06-200-3537A	93
James Irrigation District	14-06-200-700-A	9,700
M.L. Dudley and Company, John G. Indart, and Doris J. Indart	14-06--200-4448A	2,280
Patterson Irrigation District	14-06-200-3598A-LTR1-P	6,000
Reclamation District No. 1606	14-06-200-3802A	342
Tranquillity Irrigation District	14-06-200-701A	20,200
Marvin A. & Patricia Meyers	9-07-20-W1608	210
Kenneth and Karen Carvalho Revocable Trust (Formerly Virginia L. Lempesis Separate Property Trust)	11-WC-20-0026	600
Total		884,087

EXHIBIT B

2024 SLDMWA OM&R COST RECOVERY PLAN

This 2024 SLDMWA OM&R Cost Recovery Plan was developed consistent with Article 12(b) of the SLDMWA Transfer Agreement, and was provided to all parties with payment obligations not less than sixty (60) days to the effective date of [REDACTED] (“Effective Date”). Notwithstanding the Effective Date of this Plan, the cost recovery methodology will be applied retroactively to March 1, 2024.

I. INTRODUCTION - The following is a description of the allocation and recovery of ~~operation, maintenance and replacement costs~~ OM&R Costs for the following facilities by the San Luis ~~&and~~ Delta--Mendota Water Authority:

1. ~~The~~ Delta-Mendota Canal (~~hereinafter~~ “DMC”);
2. ~~The~~ Traey C.W. “Bill” Jones Pumping Plant (~~hereinafter~~ “Traey “Jones PP”);
- 2.3. C.W. “Bill” Jones Pumping Plant Operations and Maintenance Complex;
- 3.4. ~~The~~ O’Neill Pumping/Generating Plant (~~hereinafter~~ “O’Neill PGP”) and Switchyard;
5. Delta-Mendota Canal – California Aqueduct Intertie Pumping Plant (“Intertie”)
6. ~~The~~ Mendota Pool⁴;
- 4.7. Kesterson Reservoir;
- 5.8. ~~The~~ federal share of the San Luis Joint Use conveyance and conveyance pumping facilities; and
- 6.9. ~~The~~ San Luis Drain including Redfern Drain.

This 2024 SLDMWA OM&R Cost Recovery Plan is an exhibit to the Second First-Amended and Restated *Memorandum of Understanding Between the Friant Water ~~Users~~ Authority and San Luis & Delta-Mendota Water Authority Relating to Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water Delivered Through*

⁴ As Mendota Pool is a non-Federal facility, SLDMWA’s operational responsibilities related to Mendota Pool are limited to those activities specifically required to fulfill the legal and contractual obligations of the United States. - Unless undertaken pursuant to separate agreements with beneficiaries that will bear the cost, SLDMWA does not conduct additional operation, maintenance, or replacement activities for Mendota Pool.

Certain Central Valley Project Facilities (~~hereinafter the~~ "MOU"). The MOU defines the terms and conditions for allocating and recovering the costs associated with the OM&R of the above referenced facilities. Friant Division Contractors ~~will~~shall be obligated to pay the OM&R Costs associated with the delivery of Settlement Water to the Settlement Contractors in accordance with the terms of this Cost Recovery Plan. ~~The FWUA~~ will~~shall~~, as part of the FWUA cost recovery methodology developed under the FWUA Transfer Agreement, provide for the recovery of OM&R Costs allocated to the Settlement Contractors under this SLDMWA OM&R Cost Recovery Plan. To the extent the USBR has conferred upon ~~the FWUA~~ the legal authority to do so, ~~the FWUA~~ will~~shall~~ allocate such costs among, and collect such costs from, the Friant Division Contractors. For ease in representation and for practical considerations, and for the purposes of the MOU and this SLDMWA OM&R Cost Recovery Plan only, Friant Division Contractors will be considered a single CVP Water Delivery Contractor whose water deliveries constitute the total Settlement Water deliveries of the Settlement Contractors. The USBR will be allocated the costs associated with the delivery of Other Water under the provisions of the SLDMWA Transfer Agreement, except to the extent that such Other Water is specifically attributable to another party (e.g. non-CVP water delivered under a Warren Act contract wherein the Warren Act contractor will~~shall~~ be allocated applicable OM&R Costs). For purposes of completeness, OM&R ~~Costs~~ associated with Project Facilities that are unnecessary for the delivery of Settlement Water (such as of the San Luis Drain) are allocated in this SLDMWA OM&R Cost Recovery Plan, but no part ~~thereof~~ such OM&R Costs will~~shall~~ be allocated, under ~~this~~ Cost Recovery Plan, to the Friant Division Contractors, except as expressly noted.

The MOU dictates that the allocation of costs for specific acquisitions or OM&R activities not already addressed by this Cost Recovery Plan will be allocated in a manner consistent with the principles contained in this Cost Recovery Plan. Those principles include:

1. Except where expressly noted otherwise, Friant Division Contractors are responsible for paying OM&R Costs for Project Facilities used for the delivery of Settlement Water to the Settlement Contractors in accordance with the terms of the MOU and this Cost Recovery Plan;
2. Water rates will be comprised of various cost pool components based on the

principle that OM&R Costs are allocated to water deliveries based on the Project Facilities used; and

3. All Water Delivery Contractors and Friant Division Contractors have a critical interest in the effective and efficient OM&R of the Project Facilities.

II. DEFINITIONS - As used herein this Cost Recovery Plan, the following terms have the meanings as set forth below. To the extent the following terms are defined used in the MOU, their definitions are restated here for convenience:

~~1A. CVP Contractors: Parties that receive water pursuant to Water Delivery Contracts or that receive Other Water as said such terms are defined in Article 1 of the SLDMWA and FWUA Transfer Agreements. Extraordinary OM&R: As used in this SLDMWA OM&R Cost Recovery Plan, Extraordinary OM&R has the same meaning as the non-capitalized term included in the definition of OM&R in the SLDMWA Transfer Agreement. That is, the performance, funding, and financing of emergency or unusual operation and maintenance or extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs to the extent such costs are not considered Capital Improvement costs (as defined in the SLDMWA Transfer Agreement) unless SLDMWA chooses to accomplish and finance such Capital Improvements under Article 5(b) of its Transfer Agreement.~~

B.

~~SLDM Contractors: CVP Contractors that receive water (water other than Settlement Water) via any of the Project Facilities described in the SLDMWA Transfer Agreement.~~

~~Extraordinary OM&R: The performance, funding, and financing of emergency or unusual operation and maintenance or extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs to the extent such costs are not considered Capital Improvement costs (as defined in the SLDMWA Transfer Agreement) unless SLDMWA chooses to accomplish and finance such Capital Improvements under Article 5(b) of its Transfer Agreement.~~

Friant Division Contractors: CVP Water Delivery Contractors receiving water service from the Friant Division of the CVP Central Valley Project, including members and non-members of ~~the~~ FWUA.

C.

FWUA Transfer Agreement: That certain Agreement Between the United States of America and Friant Water Authority to Transfer the Operation, Maintenance and Replacement, and Certain Financial and Administrative Activities Related to of the Friant-Kern Canal and Associated Works effective ~~March 4~~ October 5, 1998~~2020~~, as amended.

D.

OM&R: Operation, maintenance and replacement as that phrase is defined in the SLDMWA Transfer Agreement Extraordinary OM&R.

E. OM&R Budget: SLDMWA's annual budget to fund the OM&R Program, which is developed and approved in accordance with the procedures set forth in Article 12(a) of the SLDMWA Transfer Agreement.

F.

~~Extraordinary OM&R: The performance, funding, and financing of emergency or unusual operation and maintenance or extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs to the extent such costs are not considered Capital Improvement costs (as defined in the SLDMWA Transfer Agreement) unless SLDMWA chooses to accomplish and finance such Capital Improvements under Article 5(b) of its Transfer Agreement.~~

~~but not limited to, the performance, funding, and financing of emergency or unusual operation and maintenance or extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs ("Extraordinary OM&R").~~

~~OM&R Budget: SLDMWA's annual budget to fund the OM&R Program which is developed and approved in accordance with the procedures set forth in Article 12(a) of the SLDMWA Transfer Agreement.~~

OM&R Costs: Costs of providing OM&R for the Project Facilities pursuant to the SLDMWA Transfer Agreement, including without limitation conveyance pumping costs associated therewith.

G.

Party Entitled to Utilize or Receive Other Water: A party required to pay SLDMWA the amounts described in Article 12 of the SLDMWA Transfer Agreement in connection with the delivery of “Other Water,” as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.

H. Project Facilities: The physical works and appurtenances associated with the C.W. “Bill” Jones Tracy Pumping Plant (formerly Tracy Pumping Plant), C.W. “Bill” Jones Pumping Plant Operations and Maintenance Complex, the Delta-Mendota Canal, Delta-Mendota Canal – California Aqueduct Intertie Pumping Plant (“Intertie”), the O’Neill Pumping-/Generating Plant and Switchyard, the federal share of the associated O’Neill Forebay and Dam, the Mendota Pool (see footnote no. 4— above in the Introduction); Kesterson Reservoir, the federal share of San Luis Unit Joint Use conveyance and conveyance pumping facilities, and the San Luis Drain.

I.

Reserves: Funds accumulated to meet unexpected emergencies or planned multi-year financial commitments of Extraordinary OM&R and/or capital improvement projects to replace or repair Project Facilities and equipment that are not included in the annual costs of ongoing, regular, or routine operations, maintenance, repairs, replacements, and other activities and actions necessary for continued structural integrity and operational reliability of Project Facilities required for the delivery of “Project Water,” as defined in the SLDMWA Transfer Agreement.

J. Settlement Contractors: Those contractors, listed in Exhibit A of the MOU, entitled to receive water service through the Project Facilities without charge, except as provided in this Cost Recovery Plan.

K.

Settlement Water: Water the Settlement Contractors are entitled to receive without charge from Project Facilities.

L.

SLDM Contractors: Water Delivery Contractors that receive water (other than Settlement Water) via any of the Project Facilities described in the SLDMWA Transfer Agreement.

M. SLDMWA: The San Luis & Delta-Mendota Water Authority.

N.

SLDMWA Transfer Agreement: That certain Agreement between the United States of America and San Luis & Delta-Mendota Water Authority to Transfer the Operation, Maintenance and Replacement, and Certain Financial and Administrative Activities Related to the San Luis and Delta-Mendota Canals, C.W. "Bill" Jones Fraey Pumping Plant, Delta-Mendota Canal/California Aqueduct Intertie Pumping Plant, and O'Neill Pumping/Generating Plant, San Luis Drain and Associated Works effective March-January 14, 19982020, as amended.

O.

USBR: United States Department of Interior, Bureau of Reclamation.

P. Water Delivery Contract: (1) Any contract entered into by the Secretary of the United States Department of the Interior under the provisions of Sections 9(c), 9(d), or 9(e) of the Reclamation Project Act of 1939 or Section 3404 of the Central Valley Project Improvement Act pursuant to which "Project Water" is to be supplied from or through Project Facilities and (2) any exchange contract, water rights settlement contract, or similar agreement pursuant to the terms of which water is to be supplied by the United States from or using the Project Facilities, as such terms are defined in Article 1 of the SLDMWA and FWA Transfer Agreements.

Q. Water Delivery Contractor: A party holding a Water Delivery Contract with the United States, as such terms are defined in Article 1 of the SLDMWA and FWA

Transfer Agreements.

R.

Year: March ~~1~~ through February 28/29.

III. COST POOLS - OM&R Costs ~~will~~shall be accumulated into ~~six~~eight cost pools, defined as the Upper DMC and ~~Tracy Jones~~ PP cost pool (~~hereinafter~~ "Upper Cost Pool"), the Lower DMC/~~Mendota Pool~~ cost pool (~~hereinafter~~ "Lower Cost Pool"), ~~the Intertie Variable cCost s-~~cost pool ("Intertie Variable Costs-Cost Pool"), the Mendota Pool cost pool ("Mendota Pool Cost Pool"), the San Luis Joint Use conveyance and conveyance pumping facilities cost pool (~~hereinafter~~ "DWR Cost Pool"), the ~~Tracy Jones~~ PP power cost pool (~~hereinafter~~ "Tracy Jones Power Cost Pool"), the O'~~'~~Neill PGP cost pool (~~hereinafter~~ "O'~~'~~Neill Cost Pool") and the San Luis Drain cost pool ("San Luis Drain Cost Pool").

A. The Upper Cost Pool includes:

1. The OM&R Costs for the Jones PP and related Jones PP Operations and Maintenance Complex~~field office facilities~~, excluding energy costs;
2. A pro rata share of tThe OM&R Costs for the DMC from the Jones PP to Check 13 based on miles of DMC serviced above and below Check 13 (70/116 miles or 30.64%) (~~hereinafter~~ "Upper DMC");
3. The OM&R Costs associated with routine OM&R of the Intertie, except that SLDMWA will work with USBR to ensure the State of California pays routine Intertie OM&R Costs associated with the movement of State water through the Intertie;
- ~~3.4.~~ 4.5. The OM&R Costs for the Westley, Newman, and Volta Wasteways; and
- ~~4.5.~~ The OM&R Costs for the intake channel from the Tracy Fish Facility to the Jones Pumping Plant.

B. The Lower Cost Pool includes:

- ~~5.1.~~ 5.1. A pro rata share of tThe OM&R Costs for the DMC from Check 13 to (but not including) the Mendota Pool based on miles of DMC serviced above and below Check 13 (46/116 miles or 39.66%) (~~hereinafter~~ "Lower DMC"); and

- ~~6.~~ The OM&R Costs for the Mendota Pool; and
2. The OM&R Costs for the Firebaugh Wasteway.

C. The Intertie Variable Cost Pool includes:

1. DWR wheeling charges for conveyance of water from the Intertie through the California Aqueduct to O'Neill Forebay; and
2. USBR's project use energy ("PUE") costs associated with Intertie operations.

D. The Mendota Pool Cost Pool includes the operational costs associated with activities at Mendota Pool that are specifically required to fulfill statutory or contractual obligations of the United States, including but not limited to, managing deliveries from the DMC into Mendota Pool, coordination actions to assist CCID in maintaining certain elevations at Mendota Pool, coordination of flood releases from the San Joaquin River and Kings River into Mendota Pool, and monitoring and measuring water deliveries taken by contractors at Mendota Pool. -Unless undertaken pursuant to separate agreements with beneficiaries that will bear the cost, SLDMWA does not conduct additional operation, maintenance, or replacement activities for Mendota Pool.

E. The DWR Cost Pool includes the federal share of the OM&R Costs of the San Luis Joint Use conveyance and conveyance pumping facilities and the energy costs incurred in pumping water at the Dos Amigos Pumping Plant. The DWR costs associated with the OM&R ~~Ce~~ costs of the O'Neill Forebay and Dam are included in the O'Neill Cost Pool and, therefore, are not included in the DWR Cost Pool.

F. The ~~Jones~~Tracy Power Cost Pool includes the energy costs incurred at the ~~Tracy~~Jones PP and related ~~Tracy field~~Jones PP Operations and Maintenance Complex~~office facilities.~~

G. The O'Neill Cost Pool includes:

- ~~7.1.~~ The OM&R Costs for the O'Neill PGP;
- ~~8.2.~~ The OM&R Costs for the O'Neill PGP intake upstream of Check 13 from the DMC to the O'Neill PGP;

9.3. The energy costs, net of regeneration credits, incurred in pumping water at the O'Neill PGP; and

10.4. The DWR OM&R Costs for the federal share of the O'Neill Forebay and Dam.

B.H. The San Luis Drain Cost Pool includes:

1. The OM&R of the San Luis Drain; and
2. The Maintenance of the Kesterson Reservoir, except that maintenance activity relating to the Cleanup Program as defined in the Bureau of Reclamation, U.S. Department Interior Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995 ~~will~~shall be assigned in accordance with the Report.

~~C.~~

~~The OM&R Costs for the DMC shall be allocated between the Upper Cost Pool and Lower Cost Pool pro rata based on miles of DMC serviced above and below Check 13 (70/116 or 60.34 percent in the Upper Cost Pool and 46/116 or 39.66 percent in the Lower Cost Pool).~~

IV. COST ALLOCATION ~~TO SLDM CONTRACTORS~~ - The OM&R Costs assigned each Year to each of the cost pools described above will be allocated to Water Delivery SLDM Contractors and Parties Entitled to Utilize or Receive Other Water using the facilities described above for each cost pool in accordance with the following methodology:

A. Upper and Lower Cost Pools - Costs accumulated in the Upper and Lower Cost Pools will be allocated to each ~~SLDM Contractor~~ Water Delivery Contractor or Party Entitled to Receive or Use Other Water based upon the ~~SLDM Contractor's~~ party's cost allocation percentage, subject to the following:-

1. The cost allocation percentage for the Upper and Lower Cost Pools ~~will~~shall be determined by dividing a Water Delivery Contractor's or Party Entitled to Utilize or Receive or Use Other Water's SLDM Contractor's "delivery base" by the total delivery base for all ~~SLDM Water Delivery Contractors and Parties Entitled to Utilize or Receive or Use Other Water~~ sharing in each cost pool.

2. The delivery base for each SLDM Contractor ~~will~~shall be computed for

the Upper Cost Pool and the Lower Cost Pool as the greater of the actual water delivered to the SLDM Contractor utilizing that cost pool's facilities during the Year, or the amount established under the Minimum Participation requirements described in Section V.A. hereof.

3. 25% of the OM&R Costs for the Lower Cost Pool will be allocated in the Mendota Pool Cost Pool.

— □

A. — □

B. Intertie Variable Cost Pool – Costs accumulated in the Intertie Variable Cost Pool will be allocated to each Water Delivery Contractor and Party Entitled to Utilize or Receive Other Water on the same basis as the Upper and Lower Cost Pool, subject to the following:

1. In water years where the south-of-Delta agricultural water allocation is 0% and/or in water years where 0% agricultural service water is available for delivery during the contract year (regardless of the south-of-Delta agricultural service water allocation): 65% of variable Intertie OM&R Costs will be allocated to Friant Division Contractors. The remaining 35% will be allocated to ~~contractors other than Friant Division Contractors~~ all other SLDM Contractors and Parties Entitled to Utilize or Receive Other Water on the same basis as the Upper Cost Pool.

2. In water years where the south-of-Delta agricultural water allocation is 1% - 5%:

i. The first time such event occurs, 20% of variable Intertie OM&R Costs will be allocated to Friant Division Contractors, ~~Friant Division Contractors~~ with the remaining 80% being allocated to all other SLDM Contractors and Parties Entitled to Utilize or Receive Other Water ~~contractors other than Friant Division Contractors~~ on the same basis as the Upper Cost Pool;

ii. The second time such event occurs, no cost will be imposed on Friant Division Contractors (i.e., SLDM Contractors and Parties

- Entitled to Utilize or Receive Other Water will pay on the same basis as the Upper Cost Pool); and
- iii. The third time such event occurs, FWA, SLDMWA, and USBR will negotiate a new allocation methodology for 1% to 5% allocation years.
3. In water years where the south-of-Delta agricultural service water allocation is greater than 5%: ~~FWA~~Friant Division Contractors will not be allocated any variable Intertie OM&R Costs; 100% of variable Intertie OM&R Costs will be allocated to ~~SLDM~~ Contractors and Parties Entitled to Utilize or Receive Other Water ~~other than Friant Division Contractors~~ on the same basis as the Upper Cost Pool.
4. In water years where the south-of-Delta agricultural service water allocation is greater than 5% and San Joaquin River Restoration Program Delta recapture flows are pumped at Jones PP, the daily acre-feet of recapture flows pumped at Jones PP that coincide with days that the Intertie is in operation will be presumed to have moved through the Intertie. Friant Division Contractors will be allocated a share of variable OM&R Costs for the Intertie by including these presumed flows in the total acre-feet calculation for SLDM Contractors and Parties Entitled to Utilize or Receive Other Water for that water year, and allocating a corresponding share of variable OM&R Costs to Friant Division Contractors. For water years where the south-of-Delta agricultural service water allocation is less than or equal to 5%, regardless of what volumes are pumped at Jones PP, no additional OM&R Costs for the Intertie will be allocated to Friant Division Contractors above what is enumerated in subsections 2.A-C above.
5. Intertie operations will be reviewed upon request by either Party to determine if changes in the allocation methodology are warranted.
6. NOTE: SLDMWA will work with USBR to ensure the State of California pays variable Intertie OM&R Costs associated with the movement of State

water through the Intertie; Friant Division Contractors will not be allocated any such costs.

C. Mendota Pool Cost Pool – Costs within the Mendota Pool Cost Pool will be allocated to the contractors taking delivery in Mendota Pool based upon the Water Delivery Contractor’s or Party Entitled to Utilize or Receive Other Water’s cost allocation percentage, using similar methodology to that described in Section IV.A.1 above, subject to the following:

1. In addition to the OM&R Costs for Mendota Pool activities, the Mendota Pool Cost Pool will include 25% of the OM&R Costs of the Lower Cost Pool.
2. Water delivered in Mendota Pool that does not move through the Lower DMC will be allocated Mendota Pool operational costs and 25% Lower Cost Pool costs. Deliveries from the Mendota Pool that do not originate from the DMC (such as San Joaquin and Kings River flows and Mendota Pool pump-ins) will be excluded from the allocation of all other OM&R Costs, including O’Neill Storage, Extraordinary OM&R, and Reserve cost allocations, unless specifically agreed to by SLDMWA and FWA.
3. Minimum Participation requirements as described in Section V.A. will not apply to the allocation of the Mendota Pool Cost Pool.

Water delivered in Mendota Pool that moves through the Lower DMC will be allocated Mendota Pool operational costs and 100% Lower Cost Pool costs (see Section IV.2.A above).

NOTE: Water delivered in Mendota Pool that is not conveyed through the DMC will not be allocated O’Neill Storage costs or Reserve costs, unless specifically agreed to by SLDMWA and FWA.

A.D. DWR Cost Pool - Costs within the DWR Cost Pool ~~will~~ shall be sub-allocated into two cost pools, defined as the North of Dos Amigos Cost Pool and the South of Dos Amigos Cost Pool.

1. The North of Dos Amigos Cost Pool includes the federal share of the DWR OM&R Costs associated with the San Luis Canal north of the Dos

Amigos Pumping Plant.

~~1.2.~~ The South of Dos Amigos Cost Pool includes the federal share of the DWR OM&R Costs associated with the San Luis Canal south of the Dos Amigos Pumping Plant, the federal share of the DWR OM&R Costs associated with the Dos Amigos Pumping Plant, and the energy costs incurred at the Dos Amigos Pumping Plant.

OM&R Costs for the North of Dos Amigos Cost Pool and South of Dos Amigos Cost Pool ~~will~~ be allocated to the Water Delivery SLDM Contractors and Parties Entitled to Utilize or Receive Other Water directly utilizing the facilities in each such cost pool. The percentage of costs allocated to each such ~~SLDM Contractor/-party~~ will be determined by dividing the total water deliveries to such ~~contractor/party SLDM Contractor~~ utilizing the Project Facilities in each cost pool by the total water deliveries to Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water SLDM Contractors utilizing such facilities during the Year.

~~A.E.~~ Traey-Jones Power Cost Pool - Costs within the ~~Jones~~Traey Power Cost Pool ~~will~~ be allocated to those ~~SLDM~~Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water whose water is made ~~directly~~ available by virtue of water being pumped at the ~~Traey-Jones~~ PP. The percentage of costs allocated to each such ~~SLDM Contractor/party~~ will be determined by dividing the total water deliveries made available to each such ~~SLDM Contractor/party, as described above in this sub-article (C)~~ by the total of all such water deliveries made available. Minimum Participation requirements as described in Section V.A. ~~will~~ not apply to the allocation of the ~~Traey-Jones~~ Power Cost Pool.

~~A.F.~~ O'Neill Cost Pool - Each Year, the O'Neill Cost Pool will be sub-allocated between two cost pools, the "Direct Pumping Cost Pool" and the "Storage Pumping Cost Pool" as follows:

1. For purposes of allocating the O'Neill Cost Pool between the Direct Pumping Cost Pool and Storage Pumping Cost Pool only, water deliveries

made during the Year through the San Luis Joint Use or San Felipe facilities will be deemed water delivered in the Direct Pumping Cost Pool and water released from the O'Neill Forebay through the O'Neill PGP into the DMC will be deemed water delivered in the Storage Pumping Cost Pool. Water that is not conveyed through the DMC will not be deemed water delivered in either the Direct Pumping Cost Pool or the Storage Pumping Cost Pool.

1.2. The O'Neill Cost Pool ~~will~~ shall be sub-allocated to the Direct Pumping Cost Pool and the Storage Pumping Cost Pool pro rata based upon the percentage obtained by dividing each respective pool's share of water deemed delivered, during the Year as described above, against the sum of the two pools' water deliveries during the Year.

1.3. The Direct Pumping Cost Pool ~~will~~ shall be further sub-allocated to Water Delivery SLDM-Contractors and Parties Entitled to Utilize or Receive Other Water taking delivery of water directly from the San Luis Joint Use or San Felipe facilities during the Year based upon the percentage obtained by dividing the water delivered to a ~~SLDM-C~~ contractor/party utilizing the O'Neill PGP for water deliveries through the federal share of the San Luis Joint Use facilities or the San Felipe facilities by the total water deliveries utilizing the O'Neill PGP for water deliveries through the federal share of the San Luis Joint Use facilities and the San Felipe facilities during the Year.

1.4. The Storage Pumping Cost Pool ~~will~~ shall be further sub-allocated to Water Delivery SLDM-Contractors and Parties Entitled to Utilize or Receive Other Water taking delivery of water directly from the DMC or Mendota Pool facilities based on the percentage obtained by dividing the water delivered directly from the DMC or Mendota Pool facilities to such ~~SLDM-C~~ contractor/party by the total water delivered directly from the DMC or Mendota Pool facilities to ~~SLDM-C~~ Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water ~~contractors~~ during

the Year. Deliveries to Mendota Pool that are not conveyed through the DMC will be excluded from the Storage Pumping Cost Pool allocation.

None of the allocations described above for the O'Neill Cost Pool ~~will shall~~ be subject to the Minimum Participation requirements as described in Section V.A.

G. San Luis Drain Cost Pool - The maintenance costs assigned to the San Luis Drain Cost Pool ~~will shall~~ be allocated to those Water Delivery CVP Contractors and Parties Entitled to Utilize or Receive Other Water with contractual requirements for the payment of such maintenance costs, except that maintenance activity relating to the Cleanup Program as defined in the Bureau of Reclamation, U.S. Department Interior Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995 ~~will shall~~ be assigned in accordance with the Report.

V. MISCELLANEOUS COST ALLOCATION PROVISIONS

A. Minimum Participation - In recognition of the value of providing OM&R even in Years when an individual SLDM Contractor's pro rata share of costs based upon that Year's water deliveries is very low or non-existent, there will be created Minimum Participation amounts of assumed minimum water deliveries, for purposes of cost allocation only, as follows:

~~B. In Years when San Joaquin River flood flows partially or fully meet the Settlement Water delivery demands of any of the Settlement Contractors, the Settlement Contractors' allocation of the Upper Cost Pool shall be based on the actual deliveries of Settlement Water to the Settlement Contractors utilizing the Upper Cost Pool facilities or 60 percent of the aggregate of all Settlement Contractors' maximum contractual Settlement Water entitlement, whichever is larger. Provided, however, this Minimum Participation amount shall be reduced by the amount of Settlement Water transferred from the Settlement Contractors to other SLDM Contractors. Provided, further, that no such reduction shall be made in the event that the SLDM Contractor receiving the transferred water has at least the majority of its contractual water supply delivered for irrigation purposes.~~

~~(hereinafter "SLDM Irrigation Water Contractor") and the SLDM Irrigation Water Contractor has a total water supply, including CVP water, transferred water and any non-CVP water delivered using Project Facilities, of less than 25 percent of its contractual maximum for that Year. Accordingly, in determining the Minimum Participation requirement associated with the Settlement Water, transfers of Settlement Water by a Settlement Contractor to a SLDM Irrigation Water Contractor shall reduce the Settlement Contractors' Minimum Participation amount by the lesser of the amount of Settlement Water transferred or the amount of the total water supply delivered to a SLDM Irrigation Water Contractor less 25 percent of the maximum contractual entitlement of that SLDM Irrigation Water Contractor, but not less than zero. The portion of the Lower Cost Pool to be allocated to the Settlement Contractors will be based on total actual Settlement Water deliveries made to the Settlement Contractors through the Lower DMC and/or the Mendota Pool. Thus, the Settlement Water deliveries that originate as flood flows on the San Joaquin River and delivered through the Mendota Pool and/or the Lower DMC shall be included in the Settlement Contractors' delivery base for allocation of the Lower Cost Pool. (Examples: A Settlement Contractor transfers 10,000 a.f. of water to a SLDM Irrigation Water Contractor which has a maximum contractual entitlement of 100,000 a.f. in a Year in which 45% of the Settlement Water deliveries to the Settlement Contractors are made via the San Joaquin River and Mendota Pool (i.e., the Project Facilities associated with the Upper Cost Pool are not utilized), thus invoking this Minimum Participation clause. For purposes of these examples, the maximum contractual Settlement Water entitlement is presumed to be 880,000 a.f., thus 60% (the Minimum Participation applicable to Settlement Water) of the maximum contractual Settlement Water entitlement is presumed to be 528,000 a.f.. **Scenario A:** If a SLDM Irrigation Water Contractor takes water deliveries, including contractual supplies, water transferred in from a SLDM Contractor other than a Settlement Contractor, and any non-CVP water (e.g., Warren Act water), (collectively "total water supply") in excess of 25% (25,000 a.f.) of the~~

~~SLDM Irrigation Water Contractor's contractual maximum supply, the Minimum Participation applicable to the Settlement Contractors under this will be reduced by 10,000 a.f. (60% of the total Settlement Water equals 528,000 a.f. less 10,000 a.f. of transferred water results in the Minimum Participation applicable to the Settlement Contractors of 518,000 a.f.). **Scenario B:** If the same 10,000 a.f. of water is transferred by the Settlement Contractor and the total water supply (excluding this 10,000 a.f. of Settlement Water transferred) of the SLDM Irrigation Water Contractor is 21,000 a.f., the Minimum Participation applicable to the Settlement Contractors under this section will be reduced by 6,000 a.f. (4,000 a.f. of the transferred water is required to bring the total water supply of the SLDMW Irrigation Water Contractor to 25% (25,000 a.f.) of its maximum contractual supply; thus only the amount of the Settlement Water transferred that results in the SLDM Irrigation Water Contractor to exceed 25% (25,000 a.f.) of its maximum contractual supply will result in the reduction of the Minimum Participation applicable to the Settlement Contractors under this section: 21,000 a.f. total water supply plus 10,000 a.f. Settlement Water transferred (equals 31,000 a.f.) less 25,000 a.f. (25% of the 100,000 a.f. maximum contractual supply) equals 6,000 a.f.) **Scenario C:** If the same 10,000 a.f. of water is transferred by the Settlement Contractor and the total water supply of the SLDM Irrigation Water Contractor, including the Settlement Water transfer, is less than 25,000 a.f. (25% of the 100,000 a.f. maximum contractual entitlement), then no reduction in the Minimum Participation will be provided to the Settlement Contractors as a result of this transfer. **Scenario D:** If the same 10,000 a.f. of water is transferred to a non-SLDM Irrigation Water Contractor (i.e., an M&I contractor or the USBR) under any water supply scenario, the Minimum Participation will be reduced by the amount of the Settlement Water transfer, i.e., a 10,000 a.f. reduction of the 528,000 a.f., (60% of 880,000 maximum contractual Settlement water to the Settlement Contractors) results in a Minimum Participation of 518,000 a.f.)~~

C.A. In Years when an SLDM Irrigation Water SLDM Contractor's total deliveries (i.e., deliveries under its contract with the USBR plus other deliveries made

available through the ~~Tracy Jones~~ PP and the DMC) are below 25% ~~percent~~ of its maximum contractual entitlement, the delivery base for purposes of allocating the Upper Cost Pool and Lower Cost Pool ~~will shall~~ be 25% ~~percent~~ of that ~~SLDM Irrigation SLDM Water~~ Contractor's maximum contractual entitlement.

~~D.B.~~ Water Transfers - A SLDM Contractor who receives transfer water (~~hereinafter~~ "~~SLDM Transferee~~") from a Water Delivery CVP Contractor ~~will shall~~ have such water deliveries included in the SLDM Transferee's delivery base for each applicable cost pool described in Section I. above for purposes of allocating OM&R Costs for the Year (but not for delivery purposes in establishing reserves). As a result, all costs associated with the delivery of transferred water ~~will shall~~ be allocated to the SLDM Transferee in the same manner as costs are allocated to the SLDM Transferee for its CVP contractual supply and ~~will shall~~ be subject to Year-~~end~~ adjustment and reconciliation per Section ~~VIII.D.~~ below.

~~E.C.~~ Warren Act Contracts Other Water —

1. All costs associated with the conveyance of Other Water non-CVP water through Project Facilities, including all components that may be required by Reclamation, whether pursuant to a contract under the Warren Act, authorized pursuant to Section 3408(c) of the Central Valley Project Improvement Act, or under other authority, will shall be assigned to the SLDM Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water that takes delivery of such Other Wwater. As a result, all costs associated with the delivery of Other non-CVP wWater ~~will shall~~ be allocated to the SLDM Water Delivery Contractor in the same manner as costs are allocated to that SLDM Water Delivery Contractor for its CVP contractual supply and ~~will shall~~ be subject to Year-~~end~~ adjustment and reconciliation per Section VII.D. below. -In the case of ~~non-CVP water~~ deliveries of Other Water to the Settlement Contractors, the applicable Settlement Contractors, not the Friant Division Contractors, will be responsible for all costs associated with the delivery of the ~~non-CVP Other~~

~~w~~Water, including an allocable share of the OM&R Costs and ~~R~~eserve ~~C~~osts (Section VI.D.) addressed by this SLDMWA OM&R Cost Recovery Plan.

2. ~~Losses - A loss factor of five~~5 percent (5%), or ~~as may that is be the loss percentage~~ provided in the ~~governing Warren Aet~~ contract ~~or agreement,~~ ~~as applicable,~~ ~~will~~~~shall~~ be applied to the delivery of any ~~non-CVP~~Other - ~~w~~Water conveyed in any Project Facilities (e.g., ~~if the loss factor is five~~5 percent (5%), and 100 ~~acre-feet~~AF of ~~Other Water non-CVP water is~~ pumped at ~~Jones-Traey~~ PP, or as otherwise metered, ~~that will~~~~shall~~ result in 95 ~~AF~~acre-feet being considered available for delivery and will be allocated ~~OM&R C~~osts accordingly).

VI. RESERVES - In recognition of the multiple year benefits of performing certain long-term OM&R activities for Project Facilities (excepting the San Luis Joint Use conveyance and conveyance pumping facilities ~~and Mendota Pool,~~ ~~unless pursuant to separate agreement~~), including, but not limited to, the long-term capital outlays for the purchase of equipment and vehicles and reserves mandated by the SLDMWA Transfer Agreement, ~~the~~-SLDMWA ~~will~~~~shall~~ accumulate ~~R~~eserves and regularly use these ~~R~~eserves for these activities in accordance with the following:

A. Reserves -

1. ~~Annually, a Ten-y~~Year projection of ~~reserve~~ expenditures ~~in specified Reserve Categories as listed in Exhibit C to the MOU~~ will be made (“~~Ten-Year Plan~~”), along with a ~~single year projection of expenditures in those categories for the forthcoming fiscal year.~~ ~~The reserve expenditure projections will be discounted to arrive at a levelized annual reserve contribution. The discount rate will be determined annually based on the previous year's annualized LAIF interest rate. The Reserve cash requirement for the forthcoming fiscal year will be is annual contribution will be~~ allocated to each ~~SLDM Water Delivery~~ Contractor pro rata based upon the past ~~Ten~~~~y~~-Years of historic water deliveries (~~ten-year rolling~~

average of deliveries), net of funds collected from Parties Entitled to Utilize or Receive Other Water.

1.

2. Each Water Delivery SLDM Contractor's ~~total Ten-Year~~ rolling average of ~~historical~~ deliveries will include all ~~CVP contractual~~ Water Delivery Contract deliveries, ~~CVP~~ water transferred out to other Water Delivery SLDM Contractors that utilize Project Facilities for which costs are allocated ~~hereunder~~ this Cost Recovery Plan, and Other Water non-CVP water deliveries to that Water Delivery SLDM Contractor, subject to the following:

i. Each Water Delivery ~~W~~ Contractor's ten-year rolling average of deliveries ~~and~~ will be subject to the inclusion of the annual Minimum Participation amounts as determined in Section V.A above;

ii. ~~Ten-Year~~ ~~historical~~ rolling average of deliveries will not include:

a. ~~WCVP~~ water transferred in by the relevant applicable Water Delivery Contractor;

b. ~~CVP-W~~ water transferred out by the applicable Water Delivery Contractor that does not utilize Project Facilities for which costs are allocated hereunder; or

c. Deliveries to Mendota Pool not conveyed through the Lower DMC (e.g. San Joaquin River flood flows, Kings River flood flows, water released from Millerton Reservoir, Mendota Pool pump-in water, etc.).

iii. Notwithstanding the reference above to ~~CVP~~ water transferred out to other Water Delivery Contractors being included in each Water Delivery Contactor's ten-year rolling average of deliveries, ~~CVP~~ water transferred from a San Joaquin River Exchange Contractor ("Exchange Contractor") to a Water Delivery Contractor will be

included in the San Joaquin River Exchange Contractor Water Authority's ("SJRECWA") total deliveries for the purposes of allocating Reserve include CVP water transferred in by the relevant SLDM Contractor nor CVP water transferred out by the SLDM Contractor which does not utilize Project Facilities for which costs are allocated hereunder, costs and Extraordinary OM&R Costs, and costs associated with such transfers will not be an obligation of FWA Friant Division Contractors, subject to the following:

- a. Beginning in Water Year 2026 (March 1, 2026 – February 28, 2027), deliveries associated with Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority ("Exchange Contractor Transfer Program")-Transfer Program, as that program may be amended, will be excluded from FWA's Reserve allocation.
- b. In the interim, the Reserve calculations to support final accountings for Water Years 2022, 2023, 2024, and 2025 will continue to include the deliveries associated with Exchange Contractor's transfers in FWA's Reserve allocation. The same methodology (utilizing offsetting adjustments) used to calculate the reserve obligation for FWA in Water Year 2019 will apply. ~~ten-year Exchange Contractor allocable to for Reserves.~~
- a.c. Beginning in Water Year 2026, SLDMWA will no longer make the offsetting adjustments to the delivery data used to calculate the Reserves as outlined in Section VI.A.2.iii.b. - All delivery volumes associated with the Exchange Contractor's ~~Transfer P~~program will be moved from FWA's Reserve allocation to the SJRECWA's Reserve

allocation.⁵ -Any offsetting adjustments (including historical adjustments) will be removed in their entirety from the Reserve calculation for the SJRECWA. ~~and all deliveries associated with Exchange Contractor transfers will be excluded from FWA's Rreserve allocation and will instead be included in the SJRECWA Rreserve allocation. Any offsetting adjustments (including historical adjustments) will be removed from the FWA ten year rolling average of Settlement Contractor deliveries allocated to FWA in their entirety.~~

2.3. In any one Year, Rreserve expenditures may benefit some Project Ffacilities or cost pools more than others. However, r in the long-term, it is expected that Reserves will be spent generally in accordance with the overall apportionment of the OM&R Budget for each facility as that facility's OM&R Budget relates to the entire OM&R Budget (without consideration or inclusion of the cost of energy, r the OM&R Costs of the San Luis Joint Use conveyance and conveyance pumping facilities, the OM&R Costs of the Mendota Pool, or costs associated with the San Luis Drain).

4. One-time or de minimis use of Project Facilities (i.e., the delivery of Other Water under a Warren Act contract to an individual or entity that otherwise has no irregular or infrequent deliveries made through Project Facilities other water delivery contract maintained by SLDMWA) will be charged an imputed rate the SLDMWA Board-adopted for Rreserve rate component(s) for the delivery(ies) based upon the annual reserve contribution computed in VI.A. divided by one tenth of the past 10 Years of historic deliveries computed in VI.A. Such one-time or de minimis water deliveries will not be included in any water delivery base in the

⁵ SLDMWA anticipates that SJRECWA will pass through any costs associated with the Reserve allocation to the entities receiving transfers.

determination of Reserves or Reserve allocations hereunder. Revenues generated to Reserves for this one-time or de minimis use of Project Facilities will be used to reduce that Year's total Reserve requirement. - Reserve contributions from one-time or de minimis use of Project Facilities will~~shall~~ not be subject to annual reconciliation and adjustment.

5. Consistent with Sections VI.A.1-4 above and Section VII below, SLDMWA will include a Reserve component in the calculation of OM&R Water Rates for all deliveries utilizing Project Facilities, unless expressly excluded.

B. Emergency Reserves – SLDMWA will establish and maintain an Emergency Reserve Fund consistent with Article 14 of the SLDMWA Transfer Agreement. SLDMWA will include a sub-component in the Reserve component described in Section VI.A above for the Emergency Reserve Fund when required.

C. Other – SLDMWA may also utilize Reserve funds to repay specific Extraordinary OM&R Costs that utilize long-term financing or debt. When the SLDMWA Board of Directors takes action to authorize such long-term financing or debt and the collection of Reserve funds to repay the same, the SLDMWA Board of Directors will establish whether and how the additional Reserve fund component(s) will be included in the calculation of OM&R Water Rates for some or all deliveries utilizing Project Facilities. -It is understood that the cost allocation methodology for individual Extraordinary OM&R projects may differ from the cost allocation methodology used to allocate Reserve costs. -

VII. RATE COMPONENT CALCULATIONS / WATER RATES

A. Rate components will~~shall~~ be established for each cost pool listed in Section III on a per A ~~F~~acre foot basis. Rate components will~~shall~~ be calculated in accordance with the c ~~C~~ost a ~~A~~llocation to Water Delivery SLDM Contractors in Section IV using budgeted amounts for the Year for each cost pool divided by projected water deliveries utilizing the Project Facilities and/or energy associated with the applicable cost pool for the Year. The Reserve rate component(s) will~~shall~~ be

computed by dividing each Water Delivery SLDM Contractor's expected annual contribution, in accordance with Section VI.A-B., by projected water deliveries to that SLDM Water Delivery Contractor for the Year.

- B. The "OM&R Water Rate" for a given delivery will be calculated by adding together various cost pool components and/or the Reserve rate component(s) associated with that delivery. For example, the OM&R Water Rate for a delivery along the Lower DMC will include the following components: Upper Cost Pool + Jones Power Cost Pool + Intertie Variable Cost Pool (if applicable) + Lower Cost Pool + O'Neill Storage Cost Pool + Reserves (more than one reserve component potentially applicable). The proposed water rates for deliveries to various geographic locations, including the cost pool and/or Reserve components, will be provided to the SLDMWA Board of Directors when OM&R Water Rates are presented to the Board of Directors for action.
- C. Reference to "adjusted" OM&R Water Rates on rates sheets presented to the SLDMWA Board of Directors will refer to rates that utilize some, but not all rate components for a delivery that does not incur certain OM&R Costs. For example, an "adjusted" OM&R Water Rate is charged to deliveries that are pumped-in along the Lower DMC and do not utilize Upper Cost Pool facilities.

~~4.~~

VIII. PAYMENT AND RECONCILIATION

- A. Amounts payable for water delivered to Water Delivery SLDM Contractors each calendar month ~~will~~ be computed by multiplying the sum of the rate components (Rate) applicable to water deliveries by the quantity (acre feet) of such water deliveries scheduled for the month, adjusted for differences between actual and scheduled deliveries, at the applicable Rate, for prior months.
- B. ~~The~~ SLDMWA will bill ~~the~~ FWUA to provide for recovery of OM&R Costs allocated to the Settlement Contractors ~~which that~~ are payable by the Friant Division Contractors under this SLDMWA OM&R Cost Recovery Plan ~~pursuant~~

hereto.

- C. Payments due under this SLDMWA OM&R Cost Recovery Plan for water deliveries ~~will shall~~ be made in advance. All payments must be received by ~~the~~ SLDMWA by the 15th of the month prior to the month of such scheduled water deliveries. -For instances where SLDMWA invoices FWA after the 10th of the month, a minimum of five (5) calendar days will be afforded FWA for payment.- Notification of electronic transfer of funds payments to the SLDMWA ~~will shall~~ be provided in advance of or concurrent with such payment.
- D. Payments received after the due dates noted above are delinquent and ~~will shall~~ be subject to an interest charge ~~-, A~~ as well as to any remedies for deficiencies provided in Article ~~124~~ of the SLDMWA and FWUA Transfer Agreements and IV.B. of the MOU. ~~The~~ interest charge ~~will shall~~ be calculated pursuant to the Prompt Payment Act, as amended (31 U.S.C. § 3901, et seq.). The interest charge will be based upon any and all accumulated advance payment deficiencies. Interest ~~will shall~~ accrue for each day past the due date and ~~will shall~~ be accumulated based upon a 360~~-~~day year (interest ~~will shall~~ compound on a simple interest basis).
- E. Annual reconciliation and adjustment of the OM&R Costs and their allocation to each SLDM Water Delivery Contractor (“Final Accounting”) will be made within sixty (60) 90-days following the completion and SLDMWA Board of Directors’ acceptance of the annual audited financial statements containing the costs to be allocated~~of the end of each Year, excepting the DWR Cost Pool and Tracy Power Cost Pool, which will be reconciled and adjusted within 90 days of when the actual costs are known.~~ The Final Accounting for a given Year will be treated as final and no longer subject to any dispute following the expiration of the applicable statute of limitations, as may be modified by law. The parties also agree that SLDMWA may reopen a Final Accounting under appropriate circumstances.
- F. Reconciled and adjusted OM&R Cost allocation ~~is~~ applicable to each Water Delivery SLDM Contractor or Party Entitled to Utilize or Receive Other Water,

including annual reserve amounts, ~~will~~ shall be compared to payments made by or on account for each ~~SLDM Water Delivery~~ Contractor for water deliveries during the Year. In the event payments made by or on account of a ~~SLDM Water Delivery~~ Contractor exceed costs allocated to that ~~SLDM Water Delivery~~ Contractor (surplus), ~~the~~ SLDMWA will refund the amount of the surplus to the payee or the payee may direct ~~the~~ SLDMWA to apply such surplus to ~~future~~ amounts ~~otherwise~~ due under this SLDMWA ~~OM&R~~ Cost Recovery Plan. In the event costs allocated to the ~~SLDM Water Delivery~~ Contractor exceed payments made by or on account of a ~~SLDM Water Delivery~~ Contractor (deficiency), the payee ~~will~~ shall have ~~thirty~~ (30) days from the notice of such deficiency to make payment. Payments not received within ~~thirty~~ (30) days ~~will~~ shall be subject to the late payment provision as described in Section VII.B above starting on the date of delinquency, as well as subject to any remedies for deficiencies provided in Article ~~121~~ of the SLDMWA and FWUA Transfer Agreements and IV.B. of the MOU.

- G. ~~The~~ SLDMWA will apply funds to cover deficiencies paid by the USBR under appropriate legal instruments in accordance with terms outlined in Section ~~121~~ of the SLDMWA Transfer Agreement.
- H. ~~The~~ FWUA will collect and remit payments due for OM&R Costs allocated to Settlement Contractors under this SLDMWA OM&R Cost Recovery Plan in accordance with the terms of this section. ~~The~~ FWUA will apply funds to cover deficiencies paid by the USBR under appropriate legal instruments in accordance with terms outlined in Section IV of the MOU and Section ~~121~~ of the FWUA Transfer Agreement.

EXHIBIT C

RESERVE CRITERIAS

In recognition of the long-term benefits associated with certain OM&R activities, expenditures meeting the criteria established below ~~will~~shall be made from ~~R~~reserve funds accumulated for such purposes, consistent with Section VI of the SLDMWA OM&R Cost Recovery Plan.

1. Reserve Categories:

~~A. Extraordinary OM&R~~Major Non-Routine Maintenance/Extraordinary OM&R:

A.

- i. Major non-routine maintenance improvements, modifications, replacements, or repairs, additions, or modernizations with long term benefits, exceeding one year, that have a total cost greater than \$2060,000, including labor and labor related costs for projects identified on the Ten-Year Plan(e.g., liner-replacement, structure painting, road repairs/rehab, building and structure construction and/or remodeling, pump/generator rewinds and repairs).
- ii. For any Extraordinary OM&R project for which SLDMWA's estimated total project cost is greater than 50% of the current year's routine OM&R Budget, excluding power and Reserves costs, the Planning Committee will review, evaluate, and establish a recommendation for the allocation of costs of any Extraordinary OM&R project.

~~B. Equipment and Vehicles:~~Replacement of

B. ~~M~~mobile/~~or~~stationary equipment and heavy equipment identified on the Ten-Year Plan with a total replacement cost greater than \$30,000. Equipment types and examples are as follows:

- i. Heavy Equipment (Off-Road – Unlicensed): Motor graders, loaders, backhoes, excavators, dozers, skid-steers, cranes, tractors, implements (i.e., discs, mowers, etc.), man-lifts, forklifts, etc.

- ~~i. with a purchase price exceeding \$15,000 (e.g., pumps,~~
- ~~ii. compressors, trailers, generators, motors, control mechanisms);~~
- ~~iii.~~

- ~~ii. Heavy Equipment (On-Road – Licensed): Truck/tractors, spray trucks, dump trucks, water trucks, boom trucks, utility trucks heavier than > 1.5 ton, heavy transport trailers, tilt trailers, flatbed trailers, trailer-mounted pumps/generators/compressors, belly dump trailers, etc. with a purchase price exceeding \$20,000 (e.g., dump trucks, cranes, loaders, excavators, motor graders, forklifts, tractors, belly dumps);~~
- ~~iv.iii. Shop Support Stationary Equipment: Machine Shop equipment, Electric Shop test equipment, Vehicle Maintenance Shop equipment, Sandblast and Paint Shop equipment, etc.~~

~~C. Vehicles: Replacement of light passenger/utility vehicles identified on the Ten-Year Plan that have a total replacement cost (including labor) greater than with a purchase price exceeding \$1525,000 (e.g., sedans, pickups, utility vehicles, vans, etc.); and~~

~~D. Office & Computer/Network Equipment: Replacement of office and electronic equipment and computer software identified on the Ten-Year Plan with an annual aggregate purchase replacement cost price greater than \$20,000 (e.g., computers and peripherals, copiers, printers, telecommunications, radios, electronic instrumentation excepting replacement parts, upgrades or peripherals with a purchase price of less than \$1,000, e.g., monitors, modems, keyboards, hard drives, RAM, mother boards, printer drums, repairs).~~

~~E. Facility Infrastructure Rehabilitation/Replacement: Improvement, modification, replacement, repair, addition, or modernization projects on the SLDMWA O&M Project Facilities identified on the Ten-Year Plan that have a total cost greater than \$530,000, including labor and labor-related costs. The typical types of projects for this category, include but are not limited to:~~

- ~~i. Roofing Systems repair or replacement,~~

- ii. Building Interior/Exterior Components repair, remodel/upgrade,
- iii. Building HVAC Systems replacement,
- iv. Building Electrical & Communication Systems modernization,
- v. Building Plumbing Systems replacement,
- vi. Building/Facility Fire Protection & Security Systems replacement/modernization,
- vii. O&M Shop Support Equipment/Systems replacement/modernization, and
- viii. Facility Pavement & Grounds repairs/replacement & upgrades.

F. Supervisory Control and Data Acquisition (SCADA): Improvements, modifications, replacements, repairs, additions, or modernizations of SCADA system and associated hardware and software identified on the Ten-Year Plan with a total replacement cost (including labor) greater than \$20,000.

G. NOTES:

- i. Each Reserve Category requires the development and management of a specific Ten-Year Plan for the category's replacement, additions, rehabilitation, and modernization needs.
- ii. These cost thresholds will apply beginning on the Effective Date of the SLDMWA OM&R Cost Recovery Plan. Prospectively, during the annual budget development process, staff will work with the OM&R Technical Committee to evaluate any necessary increases to the cost thresholds, utilizing the USBR Operations and Maintenance Cost Index and other available tools.

2. Emergency Reserves: SLDMWA will establish and maintain an Emergency Reserve Fund consistent with Article 14 of the SLDMWA Transfer Agreement.

~~As mandated per Article 13 of the General Form Agreement for the Transfer of the Operation, Maintenance, and Replacement, and Certain Financial and Administrative Activities of the Delta-Mendota Canal and Related Works, between the United States Department of Interior~~

Bureau of Reclamation and the San Luis & Delta-Mendota Water Authority.3.

Other: The Finance & Administration Committee may recommend necessary changes to the Reserve Categories or the accumulation of additional ~~R~~reserve funds (e.g. to fund debt/financed OM&R Costs).

DRAFT

EXHIBIT D

CONTRACTOR SERVICE (DELIVERY) AREAS

	Upper DMC	Lower DMC	Mendota Pool	San Felipe	San Luis Joint Use
Banta-Carbona Irrigation District	X				
Centinella Water District	X				
Del Puerto Water District	X				
Patterson Water District	X				
Plain View Water District Byron Bethany Irrigation District	X				
West Side Irrigation District	X				
West Stanislaus Irrigation District	X				
City of Tracy	X				
Santa Nella County Water District	X				X
Broadview Water District		X			
Eagle Field Water District		X			
Mercy Springs Water District		X			
Oro Loma Water District		X			
Pacheco Water District		^			X
Panoche Water District		X			X
San Luis Water District	X	X	X		X
City of Dos Palos					X
Widren Water District		X			
State of California, Mendota Wildlife Area	X	X	X		
Fresno Slough Water District			X		
Hughes, M&M Tranquillity Public Utility District			X		
James Irrigation District			X		
Laguna Water District			X		
Reclamation District #1606			X		
Traction Ranch Coelho Family Trust			X		
Tranquility Irrigation District			X		
Westlands Water District			X		X
Santa Clara Valley Water District				X	
San Benito County Water District				X	
Exchange Contractors					
Central California Irrigation District	X	X	X		
Firebaugh Canal Company		X	X		
Columbia Canal Company			X		
San Luis Canal Company			X		
City of Coalinga					X
City of Avenal					X
City of Huron					X
Refuge	X	X	X		X

<u>Meyers Farm Family Trust</u>			<u>X</u>		
<u>Dudley-Indart (CGH) (incl. Robinson Family Farms LP, Vista Verde Farms)</u>			<u>X</u>		
<u>Kenneth & Karen Carvalho Trust</u>			<u>X</u>		

DRAFT

Comparison – First Amended FWA-SLDMWA MOU and Exhibits and Proposed Second Amended FWA-SLDMWA MOU and Exhibits

Section in First Amended MOU	Section in Second Amended MOU	Substance of Change
Preamble [no heading]	Preamble [no heading]	Non-substantive updates, incl. to update reference from FWUA to FWA
Definitions 1. CVP Contractors 2. Friant Division Contractors 3. FWUA 4. FWUA Transfer Agreement 5. Memorandum of Understanding or “MOU” 6. OM&R 7. OM&R Costs 8. OM&R Program 9. Project Facilities 10. Settlement Contractors 11. Settlement Water 12. SLDMWA 13. SLDMWA Cost Plan 14. SLDMWA Transfer Agreement 15. USBR	Definitions 1. Extraordinary OM&R 2. Friant Division Contractors 3. FWA 4. FWA Transfer Agreement 5. Memorandum of Understanding or “MOU” 6. OM&R 7. OM&R Budget 8. OM&R Costs 9. OM&R Program 10. Party Entitled to Utilize or Receive Other Water 11. Project Facilities 12. Reserves 13. Settlement Contractors 14. Settlement Water 15. SLDM Contractors 16. SLDMWA 17. SLDMWA Cost Recovery Plan 18. SLDMWA Transfer Agreement 19. USBR 20. Water Delivery Contract 21. Water Delivery Contractor	Deleted definition of CVP Contractors, replaced w/ separate definitions of Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water 1. New Extraordinary OM&R definition, tracking Transfer Agreement 2. No substantive change 3. Replace Friant Water Users Authority w/ Friant Water Authority 4. Updated reference 5. Updated reference 6. No change 7. New “OM&R Budget” definition 8. No change 9. No substantive changes 10. New definition, added from Transfer Agreement 11. Updated to included changes in 2020 Transfer Agreement 12. New definition 13. Updated to reference potential agreement for charges 14. No change 15. Updated to replace CVP Contractors w/ Water Delivery Contractors, clarify scope 16. No substantive change 17. No substantive change 18. Updated reference 19. No substantive change 20. New definition, added from Transfer Agreement 21. New definition, added from Transfer Agreement
Recitals	Recitals	Non-substantive updates and references, plus replace “CVP Contractors” with “Water Delivery Contractor” and/or “Parties Entitled to Utilize or Receive Other Water,” as appropriate
§ I. Purposes of the MOU	§ I. Purposes of the MOU	Mostly non-substantive updates, with clarification purpose of establishing principles for and rights of participation in decision-making by FWA in the OM&R Program
§ II. Standard for OM&R of the Project Facilities	§ II. Standard for OM&R of the Project Facilities	Non-substantive updates
§ III. Development of Cost Recovery Methodology	§ III. Development of Cost Recovery Methodology	Section III.A.1 amended to add reference to three agreed-upon principles of cost allocation Non-substantive updates made to III.A.2-4

Comparison – First Amended FWA-SLDMWA MOU and Exhibits and Proposed Second Amended FWA-SLDMWA MOU and Exhibits

<p>A. Cost Recovery Methodology for OM&R Costs</p> <ol style="list-style-type: none"> 1. Principles of Cost Allocation 2. Reserves 3. Disbursements of Interest or Reserves 4. Miscellaneous Revenues 	<p>A. Cost Recovery Methodology for OM&R Costs</p> <ol style="list-style-type: none"> 1. Principles of Cost Allocation 2. Reserves 3. Disbursements of Interest or Reserves 4. Miscellaneous Revenues 	
<p>§ IV. Allocation, Collection and Remittance of Costs by FWUA</p> <ol style="list-style-type: none"> A. Recovery from Friant Division Contractors B. Remedies for Non-Payment or Delinquent Payment 	<p>§ IV. Allocation, Collection and Remittance of Costs by FWUA</p> <ol style="list-style-type: none"> A. Recovery from Friant Division Contractors B. Remedies for Non-Payment or Delinquent Payment 	<p>Non-substantive updates</p>
<p>§ V. FWUA Input and Participation in SLDMWA OM&R Activities</p> <ol style="list-style-type: none"> A. FWUA Participation <ol style="list-style-type: none"> 1. Board of Directors 2. Finance and Administration Committee 3. OM&R Technical Committee 4. SLDMWA Committee Structure B. Provision of Information <ol style="list-style-type: none"> 1. Reports 2. Access C. Notices and Meeting Dates 	<p>§ V. FWA Input and Participation in SLDMWA OM&R Activities</p> <ol style="list-style-type: none"> A. FWA Participation <ol style="list-style-type: none"> 1. Board of Directors 2. Finance and Administration Committee 3. OM&R Technical Committee 4. Planning Committee 5. SLDMWA Committee Structure B. Provision of Information <ol style="list-style-type: none"> 1. Reports 2. Access C. Notices and Meeting Dates 	<p>A.1. Substantive modifications to provide FWA voting rights on any item funded, in whole or in part, from any OM&R fund or Reserves to which Friant Division Contractors have contributed</p> <p>A.2-3. Non-substantive updates</p> <p>A.4. New section re new Planning Committee, including detail re committee makeup, jurisdiction</p> <p>A.5. Non-substantive updates</p> <p>B. Non-substantive updates</p> <p>C. Updated to add references to Board, Planning Committee</p>
<p>§ VI. Resolution of Disputes</p> <ol style="list-style-type: none"> A. Process <ol style="list-style-type: none"> 1. Informal Dispute Resolution 2. Resolution through Trial by Reference B. Disputes Causing Cash Flow Difficulties C. Status of Obligations During Pendency of Dispute 	<p>§ VI. Resolution of Disputes</p> <ol style="list-style-type: none"> A. Process <ol style="list-style-type: none"> 1. Informal Dispute Resolution 2. Alternative Dispute Resolution 3. Resolution by USBR B. Disputes Causing Cash Flow Difficulties C. Status of Obligations During Pendency of Dispute 	<p>A.1. Added requirement for initial informal dispute resolution meeting within 30 days of Dispute Notice; clarity that if no resolution within 90 days, parties can pursue other remedies</p> <p>A.2. New section describing availability of Alternative Dispute Resolution</p> <p>A.3. New section describing ability to have USBR resolve disputes</p> <p>B. Revisions to clarify when payment is required following Regional Director determination that payment is due</p>

Comparison – First Amended FWA-SLDMWA MOU and Exhibits and Proposed Second Amended FWA-SLDMWA MOU and Exhibits

D. Termination of Transfers Agreements	1. Payment Obligations 2. Changes to Payment Obligations Resulting from Resolution of Dispute D. Termination of Transfer Agreements	C. New provisions dictating that FWA must pay all disputed annual OM&R Costs during course of dispute, and for disputed payment obligations re EO&M projects, payment during first 90 days of dispute must be paid into escrow or trust account D. Changed time period for notice of termination of Transfer Agreement from 12 months to 6 months
§ VII. Renegotiation Principles A. Basis for Agreement B. Events Triggering Renegotiation of MOU C. Inability to Reach Agreement on Modification of MOU	§ VII. Renegotiation Principles A. Basis for Agreement B. Events Triggering Renegotiation of MOU C. Inability to Reach Agreement on Modification of MOU	A-B. Non-substantive updates C. In the event a party seeks modification of this MOU neither party will give notice of termination of its Transfer Agreement for 6 months after the first negotiation date (shortened from 12 months)
§ VIII. Miscellaneous A. Term of MOU B. Attorneys Fees C. Entire Agreement	§ VIII. Miscellaneous A. Term of MOU B. Attorneys’ Fees C. Entire Agreement D. Exhibits E. Interpretation	A-C. Non-substantive updates D. New section describing the exhibits to the MOU, process for amending same E. New section dictating that validity/interpretation of MOU is governed by California law

Exhibit A – Settlement Contractors

List of Settlement Contractors updated to match Exhibit B to SLDMWA 2020 Transfer Agreement, with review by Reclamation.

Exhibit B – 2024 SLDMWA OM&R Cost Recovery Plan

Section in First Amended MOU Exhibit B	Section in Second Amended MOU Exhibit B	Substance of Change
§ I. Introduction	§ I. Introduction	Added intro paragraph to explain what the Cost Recovery Plan is, retroactive application. Facilities list updated to match Transfer Agreement facilities. Also amended to add reference to three agreed-upon principles of cost allocation.
§ II. Definitions 1. CVP Contractors 2. SLDM Contractors 3. Friant Division Contractors 4. FWUA Transfer Agreement	§ II. Definitions A. Extraordinary OM&R B. Friant Division Contractors C. FWA Transfer Agreement D. OM&R	Deleted definition of CVP Contractors, replaced w/ separate definitions of Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water A. New Extraordinary OM&R definition, tracking Transfer Agreement B. No substantive change C. Updated reference

Comparison – First Amended FWA-SLDMWA MOU and Exhibits and Proposed Second Amended FWA-SLDMWA MOU and Exhibits

<p>5. OM&R 6. OM&R Costs 7. Project Facilities 8. Settlement Contractors 9. Settlement Water 10. SLDMWA 11. SLDMWA Transfer Agreement 12. USBR 13. Year</p>	<p>E. OM&R Budget F. OM&R Costs G. Party Entitled to Utilize or Receive Other Water H. Project Facilities I. Reserves J. Settlement Contractors K. Settlement Water L. SLDM Contractors M. SLDMWA N. SLDMWA Transfer Agreement O. USBR P. Water Delivery Contract Q. Water Delivery Contractor R. Year</p>	<p>D. No change E. New “OM&R Budget” definition F. No change G. New definition, added from Transfer Agreement H. Updated to included changes in 2020 Transfer Agreement I. New definition J. Updated to reference potential agreement for charges K. No change L. Updated to replace CVP Contractors w/ Water Delivery Contractors, clarify scope M. No substantive change N. Updated reference O. No substantive changes P. New definition, added from Transfer Agreement Q. New definition, added from Transfer Agreement R. No change</p>
<p>§ III. Cost Pools A. Upper Cost Pool B. Lower Cost Pool C. DWR Cost Pool D. Tracy Power Cost Pool E. O’Neill Cost Pool F. San Luis Drain Cost Pool</p>	<p>§ III. Cost Pools A. Upper Cost Pool B. Lower Cost Pool C. Intertie Variable Cost Pool D. Mendota Pool Cost Pool E. DWR Cost Pool F. Jones Power Cost Pool G. O’Neill Cost Pool H. San Luis Drain Cost Pool</p>	<p>A. Added costs associated w/ routine OM&R of Intertie to Upper Cost Pool B. Removed Mendota Pool costs from Lower Cost Pool C. Added new Intertie Variable Costs Cost Pool D. Added new Mendota Pool Cost Pool E-H. No substantive changes</p>
<p>§ IV. Cost Allocation to SLDM Contractors A. Upper and Lower Cost Pools B. DWR Cost Pool C. Tracy Cost Pool D. O’Neill Cost Pool E. San Luis Drain Cost Pool</p>	<p>§ IV. Cost Allocation A. Upper and Lower Cost Pools B. Intertie Variable Cost Pool C. Mendota Pool Cost Pool D. DWR Cost Pool E. Jones Power Cost Pool F. O’Neill Cost Pool G. San Luis Drain Cost Pool</p>	<p>A. Clarified allocation, including inclusion of 25% Lower Cost Pool costs being allocated in Mendota Pool Cost Pool B. Added Intertie Variable Cost Pool allocation, variable allocation to Friant Division Contractors dependent on ag contractual allocation, provisions regarding SJRRP Delta recapture flows C. New allocation for water delivered in Mendota Pool D-E. No substantive changes F. Clarified O’Neill Cost Pool allocation (not to Mendota Pool-only deliveries) G. No substantive changes</p>
<p>§ V. Miscellaneous Cost Allocation Provisions</p>	<p>§ V. Miscellaneous Cost Allocation Provisions</p>	<p>A. 60% minimum participation in flood flow years deleted per MOA term sheet B. No substantive changes</p>

Comparison – First Amended FWA-SLDMWA MOU and Exhibits and Proposed Second Amended FWA-SLDMWA MOU and Exhibits

A. Minimum Participation B. Water Transfers C. Warren Act Contracts	A. Minimum Participation B. Water Transfers C. Other Water	C. References to “Other Water” updated to match Transfer Agreement, minor updates to losses section
§ VI. Reserves [No headings, just text in subsections A-D]	§ VI. Reserves A. Reserves B. Emergency Reserves C. Other	VI. Intro paragraph excludes Mendota Pool deliveries from Reserve allocation, unless pursuant to separate agreement A. Updated to clarify calculation/allocation of Reserve costs, updated section to explain treatment of Exchange Contractor transfers in calculation of 10-year rolling average of deliveries, shifting costs beginning WY2026 B. New section re: Emergency Reserves, consistent with Transfer Agreement C. New section confirming SLDMWA’s ability to utilize reserve funds to repay costs that utilize long-term financing or debt
§ VII. Rate Component Calculations [No headings, just text in subsections A-C]	§ VII. Rate Component Calculations / Water Rates [No headings, just text in subsections A-C]	A. No substantive changes B. New section to explain OM&R Water Rate calculation, composition of cost pool / reserve components C. New section to explain use of “adjusted” rates.
§ VIII. Payment and Reconciliation [No headings, just text in subsections A-H]	§ VIII. Payment and Reconciliation [No headings, just text in subsections A-H]	A-B. No substantive changes C. Clarification that if FWA invoiced after 10 th of month, a minimum of 5 calendar days to be afforded FWA for payment D. No substantive changes E. Updated timing re: Final Accounting, finality of Final Accounting F-H. No substantive changes

Exhibit C – Reserve Criteria
Exhibit amended to update descriptions and cost thresholds for various Reserve Categories, and to add new categories of Facility Infrastructure Rehabilitation/Replacement and Supervisory Control and Data Acquisition (SCADA). New sections added regarding Emergency Reserves and “Other,” indicating ability of Finance & Administration Committee to recommend changes to Reserve Categories or additional Reserve funds.

Exhibit D – Contractor Service (Delivery) Areas
Table updated to include information in SLDMWA 2020 Transfer Agreement, with review by Reclamation.

San Luis & Delta-Mendota Water Authority



P.O. Box 2157
Los Banos, CA 93635
Phone:(209) 826-9696
Fax: (209) 826-9698

Friant Water Authority



854 N. Harvard Ave
Lindsay, CA 93247
Phone: (559) 562-6305

April XX, 2024

VIA EMAIL

Karl Stock, Regional Director
California-Great Basin Regional Office
Federal Office Building
2800 Cottage Way
Sacramento, CA 95825-1898
kstock@usbr.gov

Re: **Commitment to Assist U.S. Bureau of Reclamation in Seeking Additional Funds through Appropriations to Offset Potential Increases in OM&R Costs for Water Deliveries to Refuges**

Dear Regional Director Stock:

This letter memorializes the commitment of the San Luis & Delta-Mendota Water Authority ("SLDMWA") and Friant Water Authority ("FWA") (collectively, the "Agencies") to jointly assist the U.S. Bureau of Reclamation ("Reclamation") in seeking additional funds through appropriations to offset potential increases in costs related to water deliveries to wildlife refuges using the project facilities transferred to SLDMWA.

The Agencies, with the confirmation of Reclamation, have executed a *Second Amended and Restated Memorandum of Understanding Relating to Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water Delivered through Certain Central Valley Project Facilities* ("Second Amended MOU").

The Agencies recognize that the Second Amended MOU includes amendments to the SLDMWA OM&R Cost Recovery Plan, which may result in increased allocations of OM&R Costs to the United States to deliver water to the refuges. The Agencies acknowledge that OM&R Costs allocated to the United States for deliveries to refuges are paid primarily from the CVPIA Restoration Fund.

In recognition of potential increases in OM&R Costs allocated to the United States to deliver water to the refuges, FWA and SLDMWA agree to jointly assist Reclamation in seeking additional

funds through appropriations to offset these potential cost increases by taking such reasonable actions as may be appropriate for the Agencies to undertake.

We request that Reclamation reach out to the executive officers of the Agencies when such funding needs become apparent, to schedule a meeting or meetings where an appropriate course of action can be discussed.

The Agencies' commitment expressed in this letter agreement will be effective on the date of transmission to Reclamation, and will remain in effect unless and until the Agencies agree otherwise.

APPROVED AND AGREED.
Friant Water Authority

APPROVED AND AGREED.
San Luis & Delta-Mendota Water Authority

Jason Phillips
Chief Executive Officer

Federico Barajas
Executive Director

cc: Ernest Conant
Rain Emerson

DRAFT