



MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Rebecca Harms, Deputy General Counsel
Cindy Meyer, Special Programs Manager
Frances Mizuno, Mizuno Consulting

DATE: November 9, 2023

RE: Resolutions Authorizing Execution of the (1) Exchange Contractors 2024-2025 Transfer Agreement and Actions Related Thereto, and (2) Exchange Contractors 2024-2025 Transfers Activity Agreement and Actions Related Thereto

BACKGROUND

Environmental Document – The U.S. Bureau of Reclamation (“Reclamation”) and the San Joaquin River Exchange Contractors Water Authority (“Exchange Contractors”) prepared the Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority 2014-2038 Final Environmental Impact Statement/Environmental Impact Report (the “2013 EIS/EIR”). The certified 2013 EIS/EIR includes analysis of the environmental effects of transfer of up to 150,000 acre-feet per year of water from the Exchange Contractors for refuge use and to Central Valley Project (“CVP”) water service contractors within the San Luis & Delta-Mendota Water Authority (“Water Authority”) for irrigation and certain specified municipal and industrial (“M&I”) uses.

Transfer Agreements – Based upon and consistent with the analysis done in the 2013 EIS/EIR, the Exchange Contractors, Reclamation, and the Water Authority entered into a 2014-2018 Transfer Agreement¹ and, subsequently, a 2019-2023 Transfer Agreement². Both 2014-2018 and 2019-2023 Transfer Agreements provided for the sale and transfer by the Exchange Contractors, and for purchase by Reclamation for refuge supply and by the Water Authority for irrigation and M&I uses, of up to 80,000 acre-feet per year of water for a period of five (5) years, implemented through successive one-year transfers.

¹ Agreement for the Acquisition of Water by the United States, San Luis & Delta-Mendota Water Authority, and Madera Irrigation District from the San Joaquin River Exchange Contractors Water Authority 2014-2018, Agreement No. 14-WC-20-4520.

² Agreement for the Acquisition of Water by the United States and San Luis & Delta-Mendota Water Authority from the San Joaquin River Exchange Contractors Water Authority 2019-2023, Agreement No. 19-WC-20-5476.

Activity Agreements – The Water Authority also entered into Activity Agreements for the 2014-2018 and 2019-2023 Transfer Agreements. Pursuant to these Activity Agreements, the Water Authority purchased transfer water on behalf of the Activity Agreement Participants. With the exception of 2014, 2015, 2021 and 2022, when the Exchange Contractors did not receive their full allocation, Water Authority Activity Agreement Participants obtained supplemental water supply each year through these agreements. These agreements provide the largest block of reliable south of Delta supplemental water supply for Water Authority members.

New Transfer Agreement and Activity Agreement – Based upon and consistent with the analysis done in the 2013 EIS/EIR, the Exchange Contractors, Reclamation, and the Water Authority are in the process of finalizing a new 2024-2025 Transfer Agreement³, the current draft of which provides the terms and conditions for the sale and transfer by the Exchange Contractors, and for purchase by Reclamation for refuge supply and the Water Authority for irrigation and M&I uses, of up to 80,000 acre-feet per year of water for a period of two (2) years, to be implemented through successive one-year transfers. The Water Authority is also in the process of finalizing a new Activity Agreement for the 2024-2025 Transfer Agreement.

ISSUES FOR DECISION

1. Whether the Water Authority should adopt the proposed Resolution Authorizing Execution of the Exchange Contractors 2024-2025 Transfer Agreement and Actions Related Thereto
2. Whether the Water Authority should adopt the proposed Resolution Authorizing Execution of the Exchange Contractors 2024-2025 Transfers Activity Agreement and Actions Related Thereto

RECOMMENDATION

Staff recommends the Board adopt both proposed resolutions.

ANALYSIS

The Exchange Contractors, Reclamation, and the Water Authority are working diligently to finalize the 2024-2025 Transfer Agreement, and staff anticipates that the Transfer Agreement will be finalized prior to the Board's December 7th meeting. Given this timing, the Board is being asked to authorize execution of the Transfer Agreement contingent upon the Water Authority member agencies participating in the Activity Agreement's concurrence to the terms of the Transfer Agreement. The Activity Agreement can be finalized when the terms of the Transfer Agreement are finalized, thus, the Board is being asked to authorize execution of the Activity Agreement contingent upon the completion of the Transfer Agreement.

³ Agreement for the Acquisition of Water by the United States, and San Luis & Delta-Mendota Water Authority from the San Joaquin River Exchange Contractors Water Authority 2024-2025

Upon adoption of the resolution regarding the Transfer Agreement and following execution of the Transfer Agreement by the Water Authority, the Transfer Agreement would become effective on January 1, 2024. Upon adoption of the resolution regarding the Activity Agreement and following execution of the Activity Agreement by at least two member agencies, the Executive Director would execute the Activity Agreement. As currently drafted, the Activity Agreement would become effective on January 1, 2024.

The activities contemplated in the Transfer Agreement and Activity Agreement are within the scope of the Exchange Contractors' approved 2014-2038 transfer program and certified 2013 EIS/EIR, such that no subsequent or supplemental CEQA review is required. (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15163, 15168(c).)

The Water Authority's participation in the Activity Agreement will require staff time to manage the project and coordinate with the Activity Agreement Participants. Pursuant to the Activity Agreement, participants are responsible for all financial (including Water Authority staff time) obligations and liabilities associated with the Water Authority's engagement.

BUDGET

No direct budget impact due to the proposed structure of the Activity Agreement whereby the cost for the Water Authority's coordination of water transfer activities pursuant to the Activity Agreement, and any additional financial obligations and liabilities associated with the coordination of transfer activities, will be paid for by only the Activity Agreement Members.

EXHIBITS

1. Resolution No. 2023-XX Authorizing Execution of the Exchange Contractors 2024-2025 Transfer Agreement and Actions Related Thereto
2. Draft Agreement for the Acquisition of Water by the United States, and San Luis & Delta-Mendota Water Authority from the San Joaquin River Exchange Contractors Water Authority 2024-2025
3. Resolution No. 2023-XX Authorizing Execution of the Exchange Contractors 2024-2025 Transfers Activity Agreement and Actions Related Thereto
4. Draft San Luis & Delta-Mendota Water Authority Exchange Contractors 2024-2025 Transfers Activity Agreement

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2023-

**RESOLUTION AUTHORIZING EXECUTION OF THE EXCHANGE CONTRACTORS
2024-2025 TRANSFER AGREEMENT AND ACTIONS RELATED THERETO**

WHEREAS, together with the U.S. Bureau of Reclamation (“Reclamation”), the San Joaquin River Exchange Contractors Water Authority (“Exchange Contractors”) prepared the Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority 2014-2038 Final Environmental Impact Statement/Environmental Impact Report dated January 2013, with the Record of Decision adopted by Reclamation on July 30, 2013 and the Environmental Impact Report certified by the Exchange Contractors on March 1, 2013 (the “2013 EIS/EIR”), analyzing the environmental effects of transfer of up to 150,000 acre-feet per year of water from the Exchange Contractors for refuge use; to Central Valley Project (“CVP”) water service contractors within the San Luis & Delta-Mendota Water Authority (“Water Authority”) for irrigation and certain specified municipal and industrial (“M&I”) uses; and to certain other CVP or State Water Project contractors; and

WHEREAS, based upon and consistent with the analysis done in the 2013 EIS/EIR, the Exchange Contractors, Reclamation, Madera Irrigation District, and the Water Authority developed the Agreement for the Acquisition of Water by the United States, San Luis & Delta-Mendota Water Authority, and Madera Irrigation District from the San Joaquin River Exchange Contractors Water Authority 2014-2018, Agreement No. 14-WC-20-4520 (“Exchange Contractors 2014-2018 Transfer Agreement”), which provided the terms and conditions for the sale and transfer by the Exchange Contractors, and for purchase by Reclamation for refuge supply and by Madera Irrigation District and the Water Authority for irrigation and M&I uses, of up to 80,000 acre-feet per year of water for a period of five (5) years, implemented through successive one-year transfers; and

WHEREAS, the Water Authority and individual Water Authority member agencies Byron-Bethany Irrigation District, Del Puerto Water District, Eagle Field Water District, Mercy Springs Water District, Pacheco Water District, Panoche Water District, San Benito County Water District, Santa Clara Valley Water District, San Luis Water District, and Westlands Water District executed the Exchange Contractors 2014-2018 Transfer Program Activity Agreement, effective November 16, 2015, to participate in the benefits and incur the obligations of the Exchange Contractors 2014-2018 Transfer Agreement; and

WHEREAS, subsequently, based upon and consistent with the analysis done in the 2013 EIS/EIR, the Exchange Contractors, the Water Authority and Reclamation entered into the Agreement for the Acquisition of Water by the United States and San Luis & Delta-Mendota Water Authority from the San Joaquin River Exchange Contractors Water Authority 2019-2023, Agreement No. 19-WC-20-5476 (“Exchange Contractors 2019-2023 Transfer Agreement”), which provided the terms and conditions for the sale and transfer by the Exchange Contractors,

and for the purchase by Reclamation for refuge supply and by the Water Authority for irrigation and M&I uses, of up to 80,000 acre-feet per year of water for a period of five (5) years, implemented through successive one-year transfers; and

WHEREAS, the Water Authority and individual Water Authority member agencies Del Puerto Water District, Panoche Water District, San Benito County Water District, Santa Clara Valley Water District, San Luis Water District, and Westlands Water District executed the Exchange Contractors 2019-2023 Transfer Program Activity Agreement, effective April 22, 2019, to participate in the benefits and incur the obligations of the Exchange Contractors 2019-2023 Transfer Agreement; and

WHEREAS, based upon and consistent with the analysis done in the 2013 EIS/EIR, the Exchange Contractors, Reclamation, and the Water Authority are in the process of finalizing the Agreement for the Acquisition of Water by the United States, and San Luis & Delta-Mendota Water Authority from the San Joaquin River Exchange Contractors Water Authority 2024-2025 (“Exchange Contractors 2024-2025 Transfer Agreement”), the current draft of which provides the terms and conditions for the sale and transfer by the Exchange Contractors, and for purchase by Reclamation for refuge supply and the Water Authority for irrigation and M&I uses, of up to 80,000 acre-feet per year of water for a period of two (2) years, to be implemented through successive one-year transfers; and

WHEREAS, the Water Authority is in the process of finalizing the Exchange Contractors 2024-2025 Transfers Activity Agreement for Water Authority members who desire to participate in the benefits and incur the obligations of the Exchange Contractors 2024-2025 Transfer Agreement, by the terms of which the costs of the water transfers will be paid by Activity Agreement Members, and not by non-participating members of the Water Authority; and

WHEREAS, the Board has considered the latest draft of the Exchange Contractors 2024-2025 Transfer Agreement, a copy of which has been presented to the Board; and

WHEREAS, the activities contemplated in the Exchange Contractors 2024-2025 Transfer Agreement and Exchange Contractors 2024-2025 Transfers Activity Agreement are within the scope of the Exchange Contractors’ 2014-2038 approved range of potential transfers and certified 2013 EIS/EIR, such that no subsequent or supplemental CEQA review is required. (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15163, 15168(c).)

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

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

Section 2. The Board hereby authorizes the Executive Director to execute the Exchange Contractors 2024-2025 Transfer Agreement subject to such additions, deletions, and other revisions as the said Executive Director shall approve prior to execution and further subject to the contingencies described in Section 3 of this Resolution.

Section 3. The authorization conferred by this Resolution shall be contingent upon the agreement of the Water Authority member agencies participating in the Exchange Contractors 2024-2025 Transfers Activity Agreement to the terms of the Exchange Contractors 2024-2025 Transfer Agreement.

Section 4. In the event the contingencies described in Section 3 fail to occur, the authorization conferred by this Resolution is revoked *ab initio*, and any documents executed by the Water Authority in reliance upon this Resolution or the Exchange Contractors 2024-2025 Transfer Agreement shall have no binding force or effect.

Section 5. The Executive Director, Chief Operating Officer, or such Water Authority employee or consultant, as either of such officers designate, are further authorized and directed to take such additional steps, and to execute such additional documents, as may be required or reasonably necessary to the completion of the activities authorized by this Resolution.

PASSED, APPROVED AND ADOPTED this 9th day of November, 2023, 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

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I hereby certify that the foregoing Resolution No. 2023- 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 9th day of November, 2023.

Federico Barajas, Secretary

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1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California
5

6 AGREEMENT FOR THE ACQUISITION OF WATER
7 BY THE UNITED STATES, AND
8 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
9 FROM THE
10 SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY
11 2024-2025
12

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PREAMBLE

34 THIS AGREEMENT FOR THE ACQUISITION OF WATER BY THE UNITED
35 STATES AND SAN LUIS & DELTA-MENDOTA WATER AUTHORITY FROM THE SAN
36 JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY from 2024-2025 is
37 made this ____ day of _____, 2023, pursuant to section 3406(d)(2) of Title XXXIV of the
38 Act of October 30, 1992 (106 Stat. 4706) Central Valley Project Improvement Act (CVPIA),
39 among the UNITED STATES OF AMERICA, acting by and through the Bureau of Reclamation
40 (Reclamation), the SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER
41 AUTHORITY (Exchange Contractors) on behalf of the San Luis Canal Company, the Central
42 California Irrigation District, the Columbia Canal Company, and the Firebaugh Canal Water
43 District, collectively referred to as the Exchange Contractors; and the SAN LUIS & DELTA-
44 MENDOTA WATER AUTHORITY (Water Authority), acting for and on behalf of its
45 participating member agencies each of whom holds a contract with the United States for water
46 service from the Central Valley Project.
47
48

RECITALS

49 WHEREAS, Reclamation and the Exchange Contractors have jointly prepared the Final
50 Environmental Impact Statement/Environmental Impact Report Dated March 1, 2013, with the
51 Record of Decision being adopted July 30, 2013, analyzing the environmental effects of the
52 transfer of water for refuge use, irrigation and certain specified M&I uses within a defined
53 geographic region for the Water Transfer Program for the San Joaquin River Exchange
54 Contractors Water Authority 2014-2038; and
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56 WHEREAS, there are no significant new or additional potential environmental effects
57 from the extension of the Water Transfer Program for an additional period during the calendar
58 years 2024 through calendar year 2025 upon the terms of this Agreement; and

59 WHEREAS, Reclamation, the Exchange Contractors, the Water Authority and Madera
60 ID previously entered into Agreement Number 6-WC-20-3336 (the 5-Year Transfer Agreement)
61 dated June 3, 2006 for the period of January 1, 2006 through and including December 31, 2010,
62 and the First Amendment to that agreement dated November 4, 2010, whereby the 5-Year
63 Transfer Agreement was extended and amended to supply Transfer Water to Reclamation,
64 Madera ID and the Water Authority; and

65 WHEREAS, Reclamation, the Exchange Contractors, the Water Authority and Madera
66 ID extended the term of the 5-Year Transfer Agreement for a period of three years, through
67 calendar year 2013, and amended certain provisions thereof by the First Amendment; and

68 WHEREAS, Reclamation, the Water Authority on behalf of its participating member
69 agencies, and Madera ID entered into Agreement Number 15-WC-20-4673 to acquire transfer
70 water made available by the Exchange Contractors during the calendar years 2014 through
71 calendar year 2018; and

72 WHEREAS, thereafter, Reclamation, and the Water Authority on behalf of its
73 participating member agencies, entered into Agreement Number 19-WC-20-5476 to acquire
74 transfer water made available by the Exchange Contractors during the calendar years 2019
75 through calendar year 2023; and

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77 WHEREAS, Reclamation and the Water Authority on behalf of its participating member
78 agencies are willing to enter into this Agreement and acquire the Transfer Water made available
79 by the Exchange Contractors during calendar years 2024 through calendar year 2025 subject to
80 the conditions specified in Reclamation’s annual transfer approvals and the other terms and
81 conditions set forth in this Agreement.

82 NOW THEREFORE, in consideration of the mutual and dependent covenants
83 herein contained, it is hereby mutually agreed by the parties hereto as follows:

84 DEFINITIONS

85 1. When used herein unless otherwise distinctly expressed, or manifestly
86 incompatible with the intent hereof, the term:

87 (a) “Agreement” shall mean this Agreement For The Acquisition Of Water By
88 The United States And San Luis & Delta-Mendota Water Authority From The San Joaquin River
89 Exchange Contractors Water Authority for the period of the calendar years from 2024 through
90 2025.

91 (b) “CVP” or “Project” shall mean the Central Valley Project as those terms are
92 defined in Section 3403(d) of the CVPIA.

93 (c) “CVP SoD Contract Allocation” shall mean the supply of CVP water made
94 available to the CVP repayment contractors in the Delta and San Felipe Divisions and the San
95 Luis Unit for agricultural use during the March 1 - February 28/29 CVP contract water year in
96 accordance with the terms of their contracts with Reclamation.

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97 (d) “CVPIA” shall mean the Central Valley Project Improvement Act, Title
98 XXXIV of the Act of October 30, 1992 (106 Stat. 4706).

99 (e) “Exchange Contract” shall mean the Second Amended Contract for
100 Exchange of Waters entered into between Central California Irrigation District, San Luis Canal
101 Company, Firebaugh Canal Water Company and Columbia Canal Company and Reclamation on
102 or about February 14, 1968.

103 (f) “Jones Pumping Plant” shall mean the federal pumping plant used to pump
104 water from the Sacramento San Joaquin Delta into CVP facilities south of said Delta.

105 (g) “Level 4 Refuge Water Needs” shall mean, pursuant to Section 3406(d)(2)
106 of the CVPIA, the water needs identified in the “Dependable Water Supply Needs” table for
107 those habitat areas set forth in the Refuge Water Supply Report. (h) “M&I Users” shall
108 mean Water Authority Participating Members, San Luis Water District, Santa Clara Valley
109 Water District, San Benito County Water District, and Westlands Water District acquiring
110 Transfer Water for M&I use during a particular Year.

111 (i) “Operations Plan” shall mean that certain document attached hereto as
112 Appendix 1, describing the principles and procedures for establishing the anticipated quantities
113 of water to be delivered in each month and each Year; establishing mechanisms for scheduling
114 the water and making adjustments to schedules; establishing the Points of Delivery; and
115 establishing and adjusting other operational details required to implement this Agreement. The
116 parties may amend the Operations Plan from time to time by unanimous written agreement by
117 attaching to this Agreement a revised written Operations Plan marked and signed by all parties

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118 and stating on its face that it is intended to be an “Operations Plan” under this provision to show
119 the effective date, without any formal amendment of this Agreement being required. In the
120 event of any inconsistencies between the terms of the Operations Plan and of this Agreement, the
121 terms of this Agreement shall prevail.

122 (j) “Point of Delivery” or “Points of Delivery” shall mean for the Water
123 Authority and Reclamation, such respective points as each shall designate with the approval of
124 Reclamation in Mendota Pool, in the Delta-Mendota Canal upstream of Mendota Pool, or in San
125 Luis Reservoir.

126 (k) “Refuge Water Supply Report” shall mean the report issued by the Mid-
127 Pacific Region of the Bureau of Reclamation of the U.S. Department of the Interior entitled
128 Report on Refuge Water Supply Investigations, Central Valley Hydrology Basin, California
129 (March 1989).

130 (l) “Secretary” or “Contracting Officer” shall mean the Secretary of the United
131 States Department of the Interior or a duly authorized representative.

132 (m) “Substitute Water” shall have the meaning set forth in the Exchange
133 Contract.

134 (n) “Transfer Participants” shall mean Reclamation and the Water Authority.

135 (o) “Transfer Water” shall mean the amount of Substitute Water provided for
136 transfer to the Transfer Participants by the Exchange Contractors each Year pursuant to the terms
137 of this Agreement through actions taken by the Exchange Contractors in accordance with the San
138 Joaquin River Exchange Contractors Water Authority’s Water Transfer Program Final 2014-

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139 2038 EIR/EIS dated March 1, 2013 and adopted July 30, 2013 to develop water for transfer,
140 consisting only of tailwater recaptured and water made available through other conservation
141 measures.

142 (p) “Refuge Water Supply Program” shall mean the program established by the
143 United States to acquire and deliver water supplies pursuant to Section 3406(d)(2) of the CVPIA.

144 (q) “Water Authority’s Participating Member Agencies” shall mean Water
145 Authority member agencies that are participating in the San Luis & Delta-Mendota Water
146 Authority Exchange Contractors 2024 – 2025 Transfer Program Activity Agreement as listed in
147 Exhibit C.

148 (r) “Year” shall mean the applicable calendar year.

149 TERM

150 2. This Agreement shall be effective on the date first herein above written and shall
151 remain in effect through December 31, 2025; provided, that the Exchange Contractors may elect
152 in writing to earlier terminate the Agreement as provided in Article 11(c).

153 (a) No later than six months prior to expiration of the Term, the Parties shall
154 commence good faith negotiations concerning the possible extension of this Agreement or a new
155 agreement. Any such extension or new agreement shall require the mutual agreement of the
156 Parties.

157 WATER MADE AVAILABLE AND PURCHASED

158 3. (a) Subject to the terms of this Agreement, the Exchange Contractors shall
159 make available to the Transfer Participants for purchase in non-Critical water years, as described

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160 in Article 6 of the Exchange Contract, a minimum of 20,000 acre feet (AF) and a maximum of
161 up to 80,000 AF of Substitute Water, including the 5,000 AF described herein for M&I Users for
162 M&I use, annually as Transfer Water for irrigation, refuge and M&I uses as described in Article
163 5. Each Year of this Agreement, subject to the provisions of Section 4(b)(i) below concerning
164 water for M&I use, the Transfer Participants shall purchase for their use the amount of Transfer
165 Water made available by the Exchange Contractors subject to the terms of this Agreement.

166 (b) The Exchange Contractors will notify the Transfer Participants by February
167 15th of each Year of the quantity of Transfer Water to be made available during the period of
168 March 1 and December 31 of that Year. If the announcement of the Exchange Contractors'
169 allocation of Substitute Water is delayed or conditioned by Reclamation, the notification to the
170 Transfer Participants shall be made within fifteen (15) days of the announcement by Reclamation
171 pursuant to Article 7 of the Exchange Contract.

172 (c) The Transfer Water shall be scheduled and delivered during the period
173 between March 1 and December 31 of each Year, subject to the requirements and limitations
174 specified in Articles 3(e) through 3(h), 5 and 6 of this Agreement and the terms set forth in the
175 Operations Plan; said delivery period may be expanded by Transfer Participants rescheduling
176 Transfer Water into the following Year with the approval of Reclamation.

177 (d) The Exchange Contractors shall not be obligated to provide any amount of
178 Transfer Water during any Year in which delivery of Substitute Water to the Exchange
179 Contractors is reduced under the terms of the Exchange Contract, or during any period in which
180 an unforeseen or highly unusual circumstance or condition exists that reduces delivery capacity

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181 of Substitute Water to the Exchange Contractors, or in the instance that any other provision of
182 this Agreement provides for interruption or termination of the delivery of Transfer Water.

183 (e) In the event the Exchange Contractors determine that the full quantity of
184 80,000 AF of Transfer Water will not be made available in any Year in which transfers are
185 otherwise required to be made hereunder during the term of this Agreement, the Exchange
186 Contractors shall not transfer any water outside of the boundaries of the Exchange Contractors
187 during such Year other than the quantities of Transfer Water they make available pursuant to the
188 terms of this Agreement and the quantities made available pursuant to the exceptions described
189 in Article 3(f) below.

190 (f) In the event the Exchange Contractors determine that the full quantity of
191 80,000 AF of Transfer Water will not be made available in any Year, they may nonetheless
192 transfer Substitute Water that is made available for transfer to other persons or parties as follows:

193 (i) through fallowing of lands within the Exchange Contractors
194 service area, including but not limited to, fallowing of lands by landowners within the Exchange
195 Contractors service area for transfer to the same or related landowners under Section 3405(a) of
196 the CVPIA;

197 (ii) through any program or plan to reduce or mitigate for saline
198 drainage flows or discharges to the San Joaquin River;

199 (iii) pursuant to any successor agreement similar to the San Joaquin
200 River Agreement (Vernalis Adaptive Management Plan) providing for fishery or water quality
201 enhancement through the purchase of water;

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- 202 (iv) by commingling and direct delivery of groundwater to lands
203 adjacent to Exchange Contractors lands;
- 204 (v) from Central California Irrigation District to the City of Dos Palos
205 pursuant to existing agreements or extensions of those agreements;
- 206 (vi) from Central California Irrigation District and Firebaugh Canal
207 Water District to Panoche Water District pursuant to existing agreements or extensions of those
208 agreements;
- 209 (vii) transfers by San Luis Canal Company in cooperation with Eastside
210 Canal Irrigation District and/or other Merced County water serving entities;
- 211 (viii) for service of water to lands in proximity to the Exchange
212 Contractors' Members' facilities or service area which water service may protect Exchange
213 Contractors' service area lands or facilities from damage through reducing groundwater use by
214 those lands receiving the Transfer Water, or which water service may be in accordance with the
215 Exchange Contractors Groundwater Sustainability Agency's Groundwater Sustainability Plan;
216 and additionally,
- 217 (ix) the Exchange Contractors may provide Substitute Water in
218 compliance with the terms of an involuntary administrative or court order requiring the water to
219 be made available for use outside of the service area established under the Exchange Contract;
220 water transferred pursuant to the exclusions described in this Article 3(f) shall be limited only by
221 the Exchange Contractors obligation to perform this Agreement in good faith.

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222 (g) Neither Substitute Water proposed to be transferred by the Exchange
223 Contractors in excess of 80,000 AF in any Year nor Substitute Water transferred pursuant to the
224 exclusions described in Article 3(f) above shall be subject to a first right of refusal of the parties
225 to this Agreement to acquire these amounts of water or any other limitation upon transfer.

226 (h) In the event that on or before February 15 of any Year, Reclamation has
227 declared that the Year is a critical calendar year under Article 4 and/or Article 7 of the Exchange
228 Contract, and at any time prior to July 1 of such Year that declaration is changed to a non-critical
229 calendar year, within 30 days after the change in the declaration the Exchange Contractors shall
230 notify the Transfer Participants of the quantity of Water the Exchange Contractors elect to make
231 available pursuant to this Agreement during that Year, if any. The Transfer Participants shall be
232 obligated to purchase their allocations of the Transfer Water (except as provided in Article 5c)
233 the Exchange Contractors elect to make available at the prices determined under this Agreement,
234 and shall schedule the delivery of such water under the Operations Plan.

235 (i) In the event that on or before February 15 of any Year, Reclamation declares
236 that the Year is a non-critical calendar year under Article 4 and/or Article 7 of the Exchange
237 Contract and that declaration is subsequently changed to a critical calendar year, the Transfer
238 Participants shall purchase any amounts of Transfer Water made available prior to such
239 declaration change in accordance with this Agreement, but the Exchange Contractors shall have
240 no further obligation to make available Transfer Water during that Year.

241 WATER PRICE AND PAYMENT TERMS

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242 4. The Transfer Participants shall pay the Exchange Contractors for all Transfer
243 Water as set forth in this Article.

244 (a) The price for Transfer Water is based upon the June CVP SoD Contract
245 Allocation for “Ag,” announced by Reclamation for each Year at the rates set forth in Exhibit A
246 for different allocation levels. Exhibit A pricing shall be applied for each month Transfer Water
247 is made available under this Agreement for that Year, applicable retroactively to any Transfer
248 Water made available before the June announcement and prospectively for Transfer Water made
249 available during the balance of the Year, even if Reclamation adjusts the SoD Contract
250 Allocation subsequent to the June announcement upward or downward. The prices shown in
251 Exhibit A, shall commence on January 1st of each Year commencing January 1, 2024, during the
252 term of this Agreement for both the Agricultural and Refuge Price Schedule and the M&I Price
253 Schedule. (b) The timing and process for M&I Users shall be as set forth in this
254 subdivision.

255 (i) The Water Authority shall notify the Exchange Contractors in
256 writing on or before March 1 (the “Option Date”) each Year of the amount of Transfer Water for
257 M&I Users the Water Authority wishes to purchase for such Year and shall concurrently tender
258 to the Exchange Contractors a non-refundable payment of Fifty Dollars (\$50) per acre foot (the
259 “Option Payment”) for such Transfer Water.

260 (ii) On or before April 1, or, if the announcement of Reclamation to the
261 Exchange Contractors pursuant to Article 7 of the Exchange Contract is delayed, the date that is
262 fifteen (15) days following Reclamation’s announcement (the applicable date being the “Call

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263 Date”), the Water Authority shall provide the Exchange Contractors with further written notice
264 of the final quantity of Transfer Water for M&I Users the Water Authority wishes to purchase
265 for such Year.

266 (iii) In the event the total quantity of water for M&I Users the Water
267 Authority requested as of the Option Date exceeds the amount of water for M&I Users the Water
268 Authority requests on the Call Date, the balance of such Transfer Water shall be offered a) for
269 agricultural uses to the Water Authority; and b) for refuge uses to Reclamation at the price for
270 such water set forth in Exhibit A, subject to the allocation provisions of Article 5 of this
271 Agreement. Provided, that in the event Reclamation does not desire to purchase its allocated
272 share of the balance of Transfer Water for M&I Users requested on the Option Date but not
273 taken on the Call Date, the Water Authority shall be obligated to purchase such Transfer Water
274 for its agricultural users.

275 (iv) Any Option Payment will be applied toward the total purchase price
276 of the quantity of Transfer Water for M&I Users as of the Call Date for such Year. However,
277 the Exchange Contractors shall be entitled to retain the Option Payment for the amount of
278 Transfer Water, if any, reserved for M&I Users on the Option Date but not requested by those
279 M&I Users on the Call Date for such Year.

280 (v) Notwithstanding the characterization of the Option Payment as “non-
281 refundable” in this Article 4, if for any reason the Transfer Water for M&I Users is not made
282 available or the quantity of Transfer Water during a Year allocated to M&I Users pursuant to
283 Exhibit B is not available under Article 5(d), including pursuant to the circumstance of a transfer

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284 of M&I water to third parties, the Exchange Contractors shall reimburse to the Water Authority
285 the Option Payment for such quantity of Transfer Water.

286 (c) In addition to paying the Transfer Water prices to the Exchange
287 Contractors, (i) since the Exchange Contractors do not have a payment responsibility for their
288 Substitute Water, the Water Authority shall confirm that its Participating Members pay directly
289 to Reclamation the applicable water rate(s) for any additional facility services required to
290 effectuate the transfer. Such payment shall be made to Reclamation prior to any Transfer Water
291 being delivered. To the extent practicable, such payment shall be made two months in advance
292 of delivery. The first payment shall be due upon approval of the scheduled delivery of the water
293 as referenced in Article 6 of this Agreement or in the month of March, if applicable, and
294 subsequent payments being due each month thereafter as applicable. The additional facility
295 services are identified in the then existing “Final Policy on Water Rates for Water Transfers from
296 One Central Valley Project (CVP) Contractor to Another CVP Contractor” as may be amended
297 by Reclamation; and (ii) Reclamation and the Water Authority’s Participating Members shall pay
298 operation and maintenance, and conveyance pumping charges directly to the Water Authority for
299 any conveyance and conveyance pumping facilities used to deliver the water; and (iii) the
300 Exchange Contractors shall pay directly to Reclamation the administrative costs incurred by
301 Reclamation to process the transfer applications referred to in Article 6 of this Agreement.
302 Payment of the administrative cost is to be made at the time the transfer application referred to in
303 Article 6 is submitted to Reclamation.

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304 (d) The Exchange Contractors shall submit appropriate invoices to Reclamation
305 and the Water Authority subsequent to the last day of each month during which the Exchange
306 Contractors have made available Transfer Water to such party. Payment for all Transfer Water
307 during such month shall be paid to the Exchange Contractors within 30 days upon verification of
308 the quantity of Transfer Water made available and receipt of such invoice. Reclamation's
309 payments shall be subject to the Prompt Payment Act. For the Water Authority, interest shall
310 accrue at the rate of 7% per annum on any balance that is not paid within thirty (30) days of the
311 invoice date.

312 (d) Invoices to Reclamation shall include the following information for
313 verification and payment processing purposes:

314 (i) the method of measurement and quantity of Transfer Water made
315 available to Reclamation at each Point of Delivery during the preceding month;

316 (ii) the Point(s) of Delivery and total quantity of Substitute Water
317 diverted by and for the Exchange Contractors during the preceding month pursuant to the
318 Exchange Contract;

319 (iii) the Exchange Contractors' Taxpayer Identification Number;

320 (iv) the Agreement Number; and

321 (v) the Remittance Address and Point of Contact.

322 (f) Invoices to the Water Authority shall include the information set forth in this
323 Article 4 and any mutually agreed-upon additional information.

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324 (g) If payment for the Transfer Water is not made within 30 days as required by
325 this Article 4, the Exchange Contractors may take the actions set forth below:

326 (i) The Exchange Contractors may immediately stop making Transfer Water
327 available to the non-paying party and shall provide notice to such party that the Agreement will
328 terminate as to the non-paying party if the party does not pay all outstanding invoices in full
329 within an additional 30 days.

330 (ii) In the event a non-paying party other than the Water Authority
331 fails to cure an event of non-payment in accordance with subdivision (i) of this Article 4(g), the
332 Exchange Contractors shall provide notice to the Water Authority, and the Water Authority shall
333 purchase the Transfer Water that the Exchange Contractors make available, but have not yet
334 delivered, to the non-paying party.

335 (iii) Notwithstanding the above, nothing in subdivisions (i) or (ii) of
336 this Article 4(g) obligates any party to pay the Exchange Contractors for non-payment for
337 Transfer Water made available by the Exchange Contractors to another party, and the Exchange
338 Contractors shall retain all remedies available at law to collect such delinquent payment from the
339 non-paying party.

340 ALLOCATION OF WATER

341 5. The Transfer Water shall be allocated among the Transfer Participants as provided in
342 this Article.

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343 (a) The Transfer Water will be allocated to Reclamation for refuge use and the
344 Water Authority for irrigation and M&I use for each Year according to Exhibit B attached hereto
345 and included herein as if set forth in full.

346 (b) In any Year in which the Exchange Contractors provide less than 80,000 AF of
347 Transfer Water, the Transfer Water allocation to Reclamation and the Water Authority shall be
348 prorated based upon Exhibit B. Such reduced allocations shall be adjusted for Transfer Water
349 designated for M&I Users as provided in Article 5(d) by proportionately reducing the quantities
350 of water allocated under Exhibit B to Reclamation and the Water Authority.

351 (c) Contingent upon appropriation as provided in Article 15, Reclamation may be
352 unable in any Year to purchase all or a portion of any Transfer Water during such Year. In such
353 case, Reclamation shall provide notice to the Water Authority that it cannot purchase a specified
354 quantity of water by March 1 of such Year. Upon such notice, Reclamation shall not have any
355 further obligation under this Agreement for payment for such Transfer Water relinquished by
356 Reclamation. In any Year in which Reclamation cannot purchase all or part of its Transfer
357 Water allocation the allocation for the Water Authority shall be increased proportionately, and
358 the Water Authority agrees to purchase such water at the rates set forth in Exhibit A, and
359 Paragraph 4(a).

360 (d) M&I Users may acquire up to the first 5,000 AF of Transfer Water.

361 (e) In any Year in which Reclamation or the Water Authority do not need their full
362 Transfer Water allocation for their respective use, they shall offer such portion of its Transfer
363 Water allocation to the other party. If accepted by the other transferee party, that party shall

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364 receive the entire additional allocation. A party agreeing to accept additional allocation shall
365 pay the Exchange Contractors for such additional allocation as provided by this Agreement.
366 Except as provided for Reclamation in Section 5(c) of this Agreement, no party shall be relieved
367 of its obligation to purchase its entire allocation unless another party agrees to purchase and pay
368 for that allocation.

369 (f) The Water Authority agrees to calculate the allocation of Transfer Water for each
370 of the Transfer Participants, for such Year and to promptly circulate such allocation to the
371 parties. The Water Authority shall circulate updated calculations at least monthly through July
372 1st of each Year to show any adjustments in allocation or price caused by

373 (i) changes in the availability of Transfer Water pursuant to Articles 3(g) and
374 3(h);

375 (ii) changes in the SoD Contract Allocation through June 30 pursuant to
376 Article 4(a);

377 (iii) Reclamation's election not to purchase all or a portion of its Transfer
378 Water; and/or

379 (iv) by a non-paying party's failure to cure an event of non-payment under
380 Article 4(g).

381 The parties shall cooperate to develop and adjust a monthly delivery schedule pursuant to the
382 Operations Plan that will reflect the allocations of Transfer Water and any changes therein. In
383 the event any party identifies an error or disputes the calculated allocations of Transfer Water,
384 the parties shall meet and confer within 5 days to reconcile any such error or dispute. The

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385 Water Authority shall not be liable to any party for performing the service of calculating the
386 Transfer Water allocations.

387 ANNUAL TRANSFER APPROVAL

388 6. Simultaneously with the notice given pursuant to Paragraph 3(b) of the quantity of
389 Transfer Water to be made available to the Transfer Participants, the Exchange Contractors shall
390 submit to Reclamation in writing the proposed quantity and schedule of Transfer Water to be
391 made available between March 1st and December 31st of that Year. Reclamation shall promptly
392 review and approve such transfer within 15 days of receipt in writing upon its determination that
393 the transfer is consistent with Section 3405(a) of the CVPIA and Reclamation's Interim
394 Guidelines for Implementation of Transfers Pursuant to Title XXXIV of the Act of October 30,
395 1992 (106 Stat. 4706), as may be revised and/or amended, which said determination and
396 approval shall be given no later than March 1 of such Year. Provided that, the Water Authority
397 submits to Reclamation the calculated allocation schedule that reflects the monthly quantities and
398 water classifications for each of the Transfer Participants for such Year. Upon such approval,
399 Transfer Water may be delivered for irrigation, M&I, or refuge purposes in accordance with the
400 provisions of this Agreement.

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POINTS OF DELIVERY;

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RESPONSIBILITY BEYOND POINTS OF DELIVERY

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405 7. (a) The Exchange Contractors shall make available Transfer Water to the
406 Water Authority and Reclamation at their respective Points of Delivery.

407 (b) Reclamation and the Water Authority shall be responsible to provide and
408 pay for all arrangements for the conveyance and conveyance pumping required to wheel the
409 Transfer Water purchased beyond the Points of Delivery identified in Article 7(a) and shall be
410 obligated to pay for all Transfer Water made available for delivery by the Exchange Contractors
411 at the Point or Points of Delivery identified pursuant to this Article and in accordance with the
412 scheduling procedures set forth in the Operations Plan, whether or not such arrangements are
413 made .

414 (c) The Exchange Contractors shall not be responsible for the control,
415 carriage, handling, use, disposal, or distribution of Transfer Water to the Transfer Participants
416 pursuant to this Agreement beyond the Point or Points of Delivery for each established pursuant
417 to Article 7(a) of this Agreement. The Transfer Participants hereby assume responsibility for all
418 claims, demands or actions arising from their respective actions to convey and deliver Transfer
419 Water from their respective Points of Delivery identified in this Article 7 or under the Operations
420 Plan.

USE OF TRANSFER WATER

422 8. The following constraints are applicable to the use of Transfer Water by the Transfer
423 Participants.

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424 (a) No Transfer Water is to be delivered either directly or indirectly to lands which
425 are within the “Initial Drainage Study Area” described on Appendix 2 to this Agreement, unless
426 approved by the Exchange Contractors.

427 (b) Transfer Water provided under this Agreement is for the use of the Transfer
428 Participants within their respective service areas. Transfer Water shall not be transferred,
429 banked or assigned from one party to any other party on price terms higher than those specified
430 in this Agreement without the prior written consent of the Exchange Contractors. Transfer Water
431 shall not be transferred, banked or assigned to any third party at any price terms without the prior
432 written consent of the Exchange Contractors. Any Transfer Water to be transferred to any third
433 party shall be offered to the other parties to this agreement for the exercise by those other parties
434 of their first right of refusal to purchase.

435 (c) The use of the Final Environmental Impact Statement/Environmental Impact
436 Report Dated March 1, 2013 for Transfer Participants may be used to comply with necessary
437 environmental documents to transfer and/or bank Transfer Water provided under 8(b).

438 COMPLIANCE WITH LAWS AND REGULATIONS

439 9. Each party to this Agreement shall comply with all applicable Federal and state laws
440 and regulations governing water quality and the transfer of water, and shall obtain any required
441 permits or licenses from the appropriate Federal, state or local agencies.

442 FORCE MAJEURE

443 10. If any party hereto shall be delayed or prevented from the performance of any act
444 required hereunder by reasons of acts of God, labor troubles, inability to procure materials,

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445 restrictive governmental laws or regulations of the United States or State of California or any
446 political subdivision thereof, or other cause without fault and beyond the control of the party
447 obligated, specifically excepting any asserted financial difficulty including fluctuations of local
448 and national economics, performance of such act shall be excused for the period of the delay and
449 the period of the performance of any such act shall be extended for a period equivalent to the
450 period of such delay but not beyond the end of the term of this Agreement; provided that if the
451 period of delay would otherwise obligate the Exchange Contractors to make water available after
452 the end of any Year, performance by the Exchange Contractors shall be excused and this
453 Agreement as to that Year shall not be enforced as to waters not delivered because of the force
454 majeure event.

455 WATER RIGHTS AND PROTECTION

456 11. (a) No party hereto shall assert that any activity under this Agreement shall affect
457 the validity of any existing water rights held by any other party. This Agreement does not
458 constitute an amendment, modification or alteration of the Exchange Contract nor a special or
459 additional benefit pursuant to Reclamation Law.

460 (b) Without limiting the foregoing, the Exchange Contractors shall be deemed to
461 have put all of the Substitute Water made available to the Water Authority and/or to Reclamation
462 hereunder to beneficial use in accordance with the requirements of the Exchange Contract.
463 Further, in no event shall the purchase of Substitute Water pursuant to this Agreement in any
464 way affect the Exchange Contractors' rights under the Exchange Contract. Nor shall the
465 Exchange Contractors be deemed not to require the amount of Transfer Water purchased under

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466 this Agreement for use within its boundaries in the future as a result of the transfer and/or sale of
467 Transfer Water hereunder.

468 (c) If any Transfer Participant during the term of this Agreement commences or
469 participates as a complaining or moving party in an administrative proceeding or legal
470 proceeding in which that Transfer Participant takes a position or contends directly or indirectly
471 by encouraging or assisting any third party to take a position or contend that (i) use of water
472 retained by the Exchange Contractors or transferred hereunder or available to the Exchange
473 Contractors from groundwater or other sources is not reasonable or beneficial, or (ii) contends
474 that the amounts of water allocated and available to the Exchange Contractors pursuant to the
475 terms of the Exchange Contract, including any amounts transferred under this Agreement or
476 under other agreements, are in excess of the amounts reasonably and beneficially necessary to
477 provide for long-term conjunctive use and reasonable conservation of surface water and
478 groundwater quantities and quality within the Exchange Contractor service area, this Agreement
479 shall be terminated on December 31st of the calendar year in which those acts occur as to all
480 Transfer Participants upon the written election of the Exchange Contractors.

481 LIABILITY AND HOLD HARMLESS

482 12. (a) Within thirty (30) days of receipt by any party to this Agreement of any claim
483 for liability arising from actions or omissions within the scope of this Agreement, the party
484 receiving the claim shall notify the other parties of such claim and provide a copy of the claim to
485 the other parties, if it is in written form. Nothing in this Article shall be construed to limit the

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486 right of any party to assert such affirmative defenses and file such cross-complaints as may be
487 appropriate in relation to any claim affecting the liability of such party.

488 (b) The United States hereby releases and holds harmless the Exchange
489 Contractors and the Water Authority, and their respective officers, agents, and employees from
490 all claims for damage to persons or property, direct or indirect, resulting from the United States'
491 performance of this Agreement.

492 (c) The Exchange Contractors hereby release and hold harmless the United States
493 and the Water Authority, and their respective officers, agents, and employees from all claims for
494 damage to persons or property, direct or indirect, resulting from the Exchange Contractors'
495 performance of this Agreement.

496 (d) The Water Authority hereby releases and holds harmless the United States and
497 the Exchange Contractors, and their respective officers, agents, and employees from all claims
498 for damage to persons or property, direct or indirect, resulting from the Water Authority's
499 performance of this Agreement.

500 WAIVER

501 13. Waiver of any breach of this Agreement by any party hereto shall not constitute a
502 continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

503 ASSIGNMENT - SUCCESSOR AND ASSIGNS OBLIGATED

504 14. This Agreement shall be binding upon and inure to the benefit of the heirs,
505 executors, administrators, assigns, and successors of the parties hereto but no assignment or

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506 transfer of this Agreement or any right or interest therein by any party shall be valid until
507 approved in writing by the other parties.

508 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

509 15. (a) The expenditure or advance of any money or the performance of any obligation
510 of the United States under this Agreement shall be contingent upon appropriation or allotment of
511 funds. No liability shall accrue to the United States in case funds are not appropriated or
512 allotted.

513 OFFICIALS NOT TO BENEFIT

514 17. No member of or delegate to Congress, Resident Commissioner, or official of the
515 Exchange Contractors or the Water Authority shall benefit from this Agreement other than as a
516 water user or landowner in the same manner as other water users or landowners.

517 NOTICES

518 18. Any notice, demand, or request authorized or required by this Agreement shall be
519 deemed to have been given, on behalf of the Exchange Contractors and/or Transfer Participants,
520 when mailed, postage prepaid, or delivered to the designated addressee for such party listed
521 below. The designation of the addressee or the address may be changed by notice given in the
522 same manner as provided in this Article for other notices.

523	To Exchange Contractors:	Mr. Chris White
524		San Joaquin River Exchange Contractors
525		Water Authority
526		P.O. Box 2115
527		Los Banos, California 93635
528		
529	To Water Authority:	Mr. Federico Barajas
530		San Luis & Delta-Mendota Water Authority

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P. O. Box 2157
Los Banos, California 93635

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535 To Reclamation:
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537 California-Great Basin

Mr. Ernest A. Conant
U.S. Bureau of Reclamation, Interior Region 10 *

Attention: Water Acquisition, MP-410

2800 Cottage Way
Sacramento, California 95825-1898

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543 IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day
544 and year first above written:

545 THE UNITED STATES OF AMERICA
546 DEPARTMENT OF THE INTERIOR

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549 By _____
550 Regional Director, Interior Region 10 * California-
551 Great Basin
552 Bureau of Reclamation

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555 SAN JOAQUIN RIVER EXCHANGE
556 CONTRACTORS WATER AUTHORITY

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559 By _____
560 Executive Director, San Joaquin River
561 Exchange Contractors Water Authority

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563 SAN LUIS & DELTA-MENDOTA
564 WATER AUTHORITY

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567 By _____
568 Executive Director, San Luis & Delta-Mendota
569 Water Authority
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EXHIBIT A		
AGRICULTURE, REFUGE AND M&I PRICE SCHEDULE		
CVP SOD AG Allocation	2024	2025
		4%
0%	\$620.38	\$645.20
5%	\$620.38	\$645.20
10%	\$591.12	\$614.76
15%	\$561.85	\$584.33
20%	\$528.49	\$549.63
25%	\$508.01	\$528.33
30%	\$488.70	\$508.24
35%	\$468.21	\$486.94
40%	\$438.95	\$456.51
45%	\$438.95	\$456.51
50%	\$374.57	\$389.55
55%	\$351.16	\$365.21
60%	\$292.63	\$304.34
65%	\$245.81	\$255.64
70%	\$222.40	\$231.30
75%	\$204.84	\$213.04
80%	\$187.28	\$194.78
85%	\$158.02	\$164.34
90%	\$128.76	\$133.91
95%	\$111.20	\$115.65
100%	\$93.64	\$97.39

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EXHIBIT B

**ALLOCATION OF WATER BETWEEN
RECLAMATION AND WATER ALLOCATION**

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EXHIBIT C

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AUTHORITY PARTICIPANTS

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SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2023-

**RESOLUTION AUTHORIZING EXECUTION OF THE EXCHANGE CONTRACTORS
2024-2025 TRANSFERS ACTIVITY AGREEMENT AND ACTIONS RELATED
THERE TO**

WHEREAS, together with the U.S. Bureau of Reclamation (“Reclamation”), the San Joaquin River Exchange Contractors Water Authority (“Exchange Contractors”) prepared the Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority 2014-2038 Final Environmental Impact Statement/Environmental Impact Report dated January 2013, with the Record of Decision adopted by Reclamation on July 30, 2013 and the Environmental Impact Report certified by the Exchange Contractors on March 1, 2013 (the “2013 EIS/EIR”), analyzing the environmental effects of transfer of up to 150,000 acre-feet per year of water from the Exchange Contractors for refuge use; to Central Valley Project (“CVP”) water service contractors within the San Luis & Delta-Mendota Water Authority (“Water Authority”) for irrigation and certain specified municipal and industrial (“M&I”) uses; and to certain other CVP or State Water Project contractors; and

WHEREAS, based upon and consistent with the analysis done in the 2013 EIS/EIR, the Exchange Contractors, Reclamation, Madera Irrigation District, and the Water Authority developed the Agreement for the Acquisition of Water by the United States, San Luis & Delta-Mendota Water Authority, and Madera Irrigation District from the San Joaquin River Exchange Contractors Water Authority 2014-2018, Agreement No. 14-WC-20-4520 (“Exchange Contractors 2014-2018 Transfer Agreement”), which provided the terms and conditions for the sale and transfer by the Exchange Contractors, and for purchase by Reclamation for refuge supply and by Madera Irrigation District and the Water Authority for irrigation and M&I uses, of up to 80,000 acre-feet per year of water for a period of five (5) years, implemented through successive one-year transfers; and

WHEREAS, the Water Authority and individual Water Authority member agencies Byron-Bethany Irrigation District, Del Puerto Water District, Eagle Field Water District, Mercy Springs Water District, Pacheco Water District, Panoche Water District, San Benito County Water District, Santa Clara Valley Water District, San Luis Water District, and Westlands Water District executed the Exchange Contractors 2014-2018 Transfer Program Activity Agreement, effective November 16, 2015, to participate in the benefits and incur the obligations of the Exchange Contractors 2014-2018 Transfer Agreement; and

WHEREAS, subsequently, based upon and consistent with the analysis done in the 2013 EIS/EIR, the Exchange Contractors, the Water Authority and Reclamation entered into the Agreement for the Acquisition of Water by the United States and San Luis & Delta-Mendota Water Authority from the San Joaquin River Exchange Contractors Water Authority 2019-2023, Agreement No. 19-WC-20-5476 (“Exchange Contractors 2019-2023 Transfer Agreement”),

which provided the terms and conditions for the sale and transfer by the Exchange Contractors, and for the purchase by Reclamation for refuge supply and by the Water Authority for irrigation and M&I uses, of up to 80,000 acre-feet per year of water for a period of five (5) years, implemented through successive one-year transfers; and

WHEREAS, the Water Authority and individual Water Authority member agencies Del Puerto Water District, Panoche Water District, San Benito County Water District, Santa Clara Valley Water District, San Luis Water District, and Westlands Water District executed the Exchange Contractors 2019-2023 Transfer Program Activity Agreement, effective April 22, 2019, to participate in the benefits and incur the obligations of the Exchange Contractors 2019-2023 Transfer Agreement; and

WHEREAS, based upon and consistent with the analysis done in the 2013 EIS/EIR, the Exchange Contractors, Reclamation, and the Water Authority are in the process of finalizing the Agreement for the Acquisition of Water by the United States, and San Luis & Delta-Mendota Water Authority from the San Joaquin River Exchange Contractors Water Authority 2024-2025 (“Exchange Contractors 2024-2025 Transfer Agreement”), the current draft of which provides the terms and conditions for the sale and transfer by the Exchange Contractors, and for purchase by Reclamation for refuge supply and the Water Authority for irrigation and M&I uses, of up to 80,000 acre-feet per year of water for a period of two (2) years, to be implemented through successive one-year transfers; and

WHEREAS, the Water Authority is in the process of finalizing the Exchange Contractors 2024-2025 Transfers Activity Agreement for Water Authority members who desire to participate in the benefits and incur the obligations of the Exchange Contractors 2024-2025 Transfer Agreement, by the terms of which the costs of the water transfers will be paid by Activity Agreement Members, and not by non-participating members of the Water Authority; and

WHEREAS, the terms of the Exchange Contractors 2024-2025 Transfers Activity Agreement will be finalized once the terms of the Exchange Contractors 2024-2025 Transfer Agreement are finalized; and

WHEREAS, the Board has considered the latest draft of the Exchange Contractors 2024-2025 Transfers Activity Agreement, a copy of which has been presented to the Board; and

WHEREAS, Activity Agreement Members that plan to execute the Exchange Contractors 2024-2025 Transfers Activity Agreement agree to indemnify and hold harmless the Water Authority and its Members who do not participate in the Activity Agreement with respect to any and all costs, losses, damages, claims and liabilities arising under the Activity Agreement; and

WHEREAS, the activities contemplated in the Exchange Contractors 2024-2025 Transfer Agreement and Exchange Contractors 2024-2025 Transfers Activity Agreement are within the scope of the Exchange Contractors’ 2014-2038 approved range of potential transfers and certified 2013 EIS/EIR, such that no subsequent or supplemental CEQA review is required. (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15163, 15168(c).)

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

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

Section 2. The Board hereby authorizes the Executive Director to execute the Exchange Contractors 2024-2025 Transfers Activity Agreement subject to such additions, deletions, and other revisions as the said Executive Director shall approve prior to execution and further subject to the contingencies described in Section 3 of this Resolution.

Section 3. The authorization conferred by this Resolution shall be contingent upon the occurrence of the following actions: (1) the completion and execution of the Exchange Contractors 2024-2025 Transfer Agreement, (2) the agreement of the Water Authority member agencies participating in the Exchange Contractors 2024-2025 Transfers Activity Agreement to the terms of the Exchange Contractors 2024-2025 Transfers Activity Agreement, and (3) at least two (2) members of the Water Authority executing the Exchange Contractors 2024-2025 Transfers Activity Agreement.

Section 4. In the event the contingencies described in Section 3 fail to occur, the authorization conferred by this Resolution is revoked *ab initio*, and any documents executed by the Water Authority in reliance upon this Resolution or the Exchange Contractors 2024-2025 Transfers Activity Agreement shall have no binding force or effect.

Section 5. The Executive Director, Chief Operating Officer, or such Water Authority employee or consultant, as either of such officers designate, are further authorized and directed to take such additional steps, and to execute such additional documents, as may be required or reasonably necessary to the completion of the activities authorized by this Resolution.

PASSED, APPROVED AND ADOPTED this 9th day of November, 2023, 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. 2023- 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 9th day of November, 2023.

Federico Barajas, Secretary

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**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
EXCHANGE CONTRACTORS 2024-2025 TRANSFERS ACTIVITY AGREEMENT**

This Activity Agreement (“**Activity Agreement**”) is entered into as of this ____ day of _____ 2023, by and among the San Luis & Delta-Mendota Water Authority (“**Water Authority**”), a joint powers agency of the State of California, and its members who execute this Agreement, who are hereinafter referred to jointly by the plural term “**Activity Agreement Members**.” Capitalized terms used in this Activity Agreement will have the meanings set forth in Section 2 below.

1. RECITALS

A. The parties to this Activity Agreement, together with certain other local agencies, have entered into an amended and restated Joint Exercise of Powers Agreement-San Luis & Delta-Mendota Water Authority dated January 1, 1992 (“**JPA Agreement**”), by and among the parties indicated therein, establishing the Water Authority for the purpose of exercising the common powers of the members, including those powers described in this Activity Agreement.

B. The Activity Agreement Members are each empowered, among other powers, to provide water service to lands within their boundaries for irrigation, municipal, and/or industrial use; to contract with the United States, the State and other public agencies, and mutual water companies and other private parties for such purposes; to control the quality of water accepted into their respective systems; to transfer water and to purchase water in order to maximize the efficient, beneficial use of the water supplies available; and to adopt rules and regulations necessary to the exercise of such powers.

C. The Activity Agreement Members have each entered into contracts with the United States for water service from the Central Valley Project (“**CVP**”) for irrigation and/or municipal and industrial (“**M&I**”) purposes within their respective jurisdictional areas and receive water conveyed through the Delta-Mendota Canal, the San Luis Canal, and/or the Pacheco Pumping Plant and Tunnel.

D. Since 1992, the Activity Agreement Members in most years have received less than the full contract allocations provided for in their CVP repayment contracts because of hydrologic conditions and/or regulatory constraints, and the Bureau of Reclamation (“**Reclamation**”) has projected continued shortages of such allocations in the future.

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E. Member agencies of the San Joaquin River Exchange Contractors Water Authority (“**Exchange Contractors**”) hold contracts for water from the United States that substitutes deliveries through the Delta-Mendota Canal for water from historical sources of surface water supplies and provides the Exchange Contractors with a highly reliable supply of water.

F. The Activity Agreement Members recognize the importance of water transfers to optimizing the use of the water supplies available from the CVP south of the Sacramento-San Joaquin River Delta and for stabilizing the quantity of water reliably available to them.

G. Together with Reclamation, the Exchange Contractors prepared the Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority 2014-2038 Final Environmental Impact Statement/Environmental Impact Report dated January 2013, with the Record of Decision adopted by Reclamation on July 30, 2013 and the Environmental Impact Report certified by the Exchange Contractors on March 1, 2013 (the “**2013 EIS/EIR**”), analyzing the environmental effects of transfer of up to 150,000 acre-feet per year of water from the Exchange Contractors for refuge supplies; to CVP water service contractors within the Water Authority for irrigation and certain specified M&I uses; and to certain other CVP or State Water Project contractors.

H. Based upon and consistent with the analysis done in the 2013 EIS/EIR, the Exchange Contractors, the Water Authority and Reclamation entered into the Agreement for the Acquisition of Water by the United States and San Luis & Delta-Mendota Water Authority from the San Joaquin River Exchange Contractors Water Authority, Agreement No. 19-WC-20-5476, for the period of the calendar years 2019 through 2023, which provided the terms and conditions for the sale and transfer by the Exchange Contractors, and for the purchase by Reclamation for refuge supply and by the Water Authority for irrigation and M&I uses, of up to 80,000 acre-feet per year of water for a period of five (5) years, implemented through successive one-year transfers.

I. Based upon and consistent with the analysis done in the 2013 EIS/EIR, the Exchange Contractors, the Water Authority and Reclamation have developed the Agreement for the Acquisition of Water by the United States and the San Luis & Delta-Mendota Water Authority from the San Joaquin River Exchange Contractors Water Authority for the period of the calendar years 2024 through 2025 (“**Exchange Contractors 2024-2025 Transfer Agreement**”), which provides the terms and conditions for the sale and transfer by the Exchange Contractors, and for the purchase by Reclamation for refuge supply and by the Water Authority for irrigation and M&I

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uses, of up to 70,000 acre-feet per year of water for a period of two (2) years, to be implemented through successive one-year transfers.

J. Water transfers commenced beginning in 2024 within the Exchange Contractors' approved range of potential transfers and covered by the 2013 EIS/EIR arranged by the Water Authority for the benefit of the Activity Agreement Members will be administered according to the terms of this Activity Agreement and consistent with the provisions of the Transfer Agreement.

K. Each of the parties to this Activity Agreement desires to participate in the benefits and is willing to incur the obligations of the Transfer Agreement, through the joint exercise of their common powers under this Activity Agreement.

L. Nothing in this agreement restricts Activity Agreement Members from pursuing water transfers that are not covered by the Exchange Contractors' approved range of potential transfers, the 2013 EIS/EIR, or this Activity Agreement.

M. The Water Authority and each of the Activity Agreement Members have shared, and continue to share, a common interest in sharing information and resources reasonably necessary to accomplish the purpose of this Activity Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the true and correct facts recited above, and of the covenants, terms, and conditions set forth herein, the Activity Agreement Members and the Water Authority agree as follows:

2. DEFINITIONS

A. "**Activity Agreement**" or "**Agreement**" shall mean this Exchange Contractors 2024-2025 Transfers Activity Agreement.

B. "**Activity Agreement Expenses**" shall mean all expenses directly incurred by the Water Authority in order to implement this Activity Agreement, together with a share of "Water Authority Administration Costs" allocable to members of this Activity Agreement; "Activity Agreement Expenses" expressly includes, but is not limited to, costs and fees associated with developing, implementing, maintaining, amending or terminating this Activity Agreement and all costs incurred by the Water Authority in pursuing, negotiating, defending litigation, holding third parties harmless or administering the Transfer Agreement.

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C. **“Activity Agreement Member”** shall mean a member of the Water Authority who is signatory to this Activity Agreement. The Activity Agreement Members are listed on Exhibit “A” attached hereto, as updated by agreement of the Activity Agreement Members from time to time; such updated Exhibit “A” shall be attached hereto and replace all prior versions of Exhibit “A”.

D. **“Administration Agreements”** shall mean those certain agreements between the Water Authority and Activity Agreement Members for the undertaking of activities and sharing of costs and benefits pursuant to Sections 22 and 23 of the JPA Agreement.

E. **“Board of Directors”** shall mean the Board of Directors of the San Luis & Delta-Mendota Water Authority.

F. **“Exchange Contractors”** shall mean the San Joaquin River Exchange Contractors Water Authority.

G. **“Exchange Contractors 2024-2025 Transfer Agreement”** or **“Transfer Agreement”** shall mean that certain Agreement for the Acquisition of Water by the United States and the San Luis & Delta-Mendota Water Authority from the San Joaquin River Exchange Contractors Water Authority for the period of the calendar years 2024 through 2025.

H. **“Exchange Contractors 2024-2025 Transfers”** shall mean the Water Authority activities under this Activity Agreement to implement one-year transfers between the Water Authority and the Exchange Contractors under the Transfer Agreement.

I. **“Fiscal Year”** shall mean the Water Authority’s March 1 through February 28/29 fiscal year.

J. **“Irrigation Users”** shall mean the Activity Agreement Members who commit to acquire Transfer Water for irrigation uses during the term of this Activity Agreement.

K. **“JPA Agreement”** shall mean that certain Amended and Restated Joint Exercise of Powers Agreement dated January 1, 1992, establishing the Water Authority, as it may be amended or restated over time.

L. **“M&I Users”** shall mean the Activity Agreement Members that may acquire Transfer Water for M&I use during a specific Year.

M. **“Transfer Water”** shall mean the water provided for transfer by the Exchange Contractors each Year pursuant to the Exchange Contractors 2024-2025 Transfer Agreement.

N. **“Water Authority”** shall mean the San Luis & Delta-Mendota Water Authority.

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O. “**Water Authority Administration Costs**” shall mean Water Authority general administration expenses, including rent and other occupancy charges, acquisition costs of office furniture and equipment, including telephone, telecopy, photocopy, cost of cars and other vehicles, insurance premiums salaries and wages of employees including payment in connection with retirement programs and other benefit programs, fees of creditors, lawyers, engineers, and other consultants, travel, telephone, telecopy, and photocopy expenses, and any other general administrative expenses, a percentage of which will be allocated to this Activity Agreement by the Water Authority.

P. “**Year**” shall mean a calendar year.

Q. All other capitalized terms used herein shall have the meaning ascribed to them in this Activity Agreement, and capitalized terms in the Exchange Contractors 2024-2025 Transfer Agreement shall have the meanings ascribed to them in that agreement; provided, that in the event of any conflicts, the terms of this Activity Agreement will prevail to determine such meanings.

3. PURPOSE OF AGREEMENT

A. The purpose of this Activity Agreement is to allow, through the joint exercise of some or all of the common powers of the Activity Agreement Members described in the Recitals above, as appropriate, the Activity Agreement Members to participate in the Exchange Contractors 2024-2025 Transfers to obtain the benefits, and to share the obligations of the Transfer Agreement under the terms set forth herein.

B. The parties acknowledge and agree that the Water Authority’s role in this Activity Agreement is to: (1) provide the umbrella joint powers agreement pursuant to which the parties may exercise their common powers and to provide services at the expense of the Activity Agreement Members; (2) act as agent for the Activity Agreement Members in order to negotiate and implement the Transfer Agreement with the Exchange Contractors for and on behalf of the Activity Agreement Members; and (3) provide administrative services relating to acquiring Transfer Water, including, but not limited to, providing notices, calculating water allocations, providing advance funding for Transfer Water, and providing billing services to the Activity Agreement Members during the term hereof.

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4. ORGANIZATION

The business of this Activity Agreement will be conducted by the Water Authority at large and therefore governed by the Board of Directors. However, it is recognized that at some time in the future the Activity Agreement Members may wish to form a separate body specifically for the purpose of directing the business of the Activity Agreement. Within twenty-four (24) months of the Effective Date, the Activity Agreement Members will evaluate whether to facilitate the formation of an Activity Agreement steering committee. Upon unanimous agreement among the Activity Agreement Members, the Board of Directors will consider establishing the organizational structure proposed by the Activity Agreement Members, which will be described in an amendment to this Activity Agreement, and that organizational structure may then serve as the governing body for this Activity Agreement.

5. POWERS RESERVED TO BOARD OF DIRECTORS AND LIMITATIONS THEREON

A. The Board of Directors will have ultimate approval authority over all Activity Agreement annual budgets based upon the recommendation of staff and approval of the Activity Agreement Members; provided, the Board of Directors may only alter an Activity Agreement annual budget in a manner consistent with the Activity Agreement Members' recommendation.

B. The Board of Directors will have the right, upon recommendation of or in consultation with staff and the approval of Activity Agreement Members, to approve all amendments to this Activity Agreement, including any amendment terminating the Activity Agreement.

C. The Board of Directors will have the right, upon the recommendation of or in consultation with staff, and the approval of the Activity Agreement Members, to act on any claims and to make decisions concerning the prosecution of, defense of, or other participation in actions or proceedings at law brought against the Water Authority arising from this Activity Agreement; provided if that action is taken at the request of the Activity Agreement Members then the costs for such action will be borne by the Activity Agreement Members.

D. The Board of Directors delegates to staff the power to conduct the activities described in this Activity Agreement pursuant to the terms of this Activity Agreement, without the required approval of the Board of Directors except as specifically provided in this Section 5. This

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delegation will specifically include, but not be limited to, the power to enter into contracts within approved Activity Agreement budgets.

6. ACCOUNTABILITY, REPORTS, AND AUDITS

A. Full books and accounts for this Activity Agreement will be maintained by the Water Authority in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for public entities. The books and records will be open to inspection by Activity Agreement Members at all reasonable times, and by bondholders and lenders as and to the extent provided by resolution or indenture.

B. There will be strict accountability of all funds deposited on behalf of the Activity Agreement with the Water Authority. The Treasurer of the Water Authority, directly or acting through its Accounting Department, will provide regular reports of Activity Agreement accounts. Funds of the Activity Agreement will be subject to audit by the official auditor of the Water Authority. An Activity Agreement Member may request an independent audit of the Activity Agreement funds; such audit will be conducted at the expense of the requesting Activity Agreement Member.

7. AUTHORIZATION TO ALLOCATE ACTIVITY AGREEMENT EXPENSES

A. Each member of the Water Authority has entered into an Administration Agreement which authorizes agreement(s) by and among the Water Authority and any of its members or other entities (including Friends of the Water Authority) to provide for undertaking and sharing costs and benefits of any authorized activity of the Water Authority.

B. The Water Authority and the Activity Agreement Members agree that all Activity Agreement Expenses, including Water Authority Administration Costs, incurred by the Water Authority under this Activity Agreement are the expenses of the Activity Agreement Members, and not of the Water Authority, and will be paid by the Activity Agreement Members. The Activity Agreement Members agree that the Board of Directors is authorized to allocate a share of Water Authority Administration Costs as part of the Activity Agreement Expenses to cover the cost to the Water Authority of administering this Activity Agreement.

C. The Activity Agreement Members agree that the costs of Transfer Water are the expenses of the Activity Agreement Members and not of non-participating Activity Agreement Members or of the Water Authority; each Activity Agreement Member shall be bound to accept

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and pay for the actual costs of such Activity Agreement Member's allocated share of Transfer Water as set forth in Section 9 of this Activity Agreement.

8. SCHEDULING

The Water Authority, in consultation with the Exchange Contractors, Reclamation and the Activity Agreement Members, will develop a process for the scheduling of the water allocated that will be subject to modification from time to time by agreement of the parties, without formal amendment of this Agreement being required.

9. PURCHASE OBLIGATION AND PROCESS FOR ALLOCATING WATER FOR M&I USERS AND FOR IRRIGATION USERS FOR EACH YEAR

During the term of the Exchange Contractors 2024-2025 Transfer Agreement, the Activity Agreement Members shall be obligated to purchase all water made available to the Water Authority as set forth in the Exchange Contractors 2024-2025 Transfer Agreement. The Water Authority shall allocate the Transfer Water among Irrigation Users and M&I Users as set forth in this Section 9.

A. Allocation for Irrigation Users. The allocation for Irrigation Users shall be the maximum quantity designated for Irrigation on Exhibit "B" plus (1) any allocation for M&I Users not accepted by M&I Users during such Year, and (2) in years in which the CVP south-of-Delta contract allocation for irrigation is 0% through 45%, any portion of Reclamation's allocation for such Year that Reclamation cannot purchase in accordance with Section 5(c) of the Transfer Agreement, as summarized in Section 9.C of this Activity Agreement. The Water Authority shall sub-allocate the quantity of Transfer Water made available for Irrigation Users among Irrigation Users based on each Irrigation User's CVP water supply contract quantity for irrigation as of the date hereof, as agreed by the parties and set forth on Exhibit "C" attached hereto.

B. Notice and Allocation for M&I Users. Beginning in January 2024 for the 2024 Year, and thereafter on each January 15, beginning January 15, 2024, promptly upon receipt of notice from the Exchange Contractors, the Water Authority shall notify the M&I Users of the quantity of Transfer Water, up to _____ acre-feet, available for M&I use. The M&I Users must notify the Water Authority in writing of each Year of the quantity of Transfer Water they desire to acquire for M&I use for the forthcoming Year. The Water Authority shall notify the Exchange Contractors in writing on or before February 1 of each Year of the amount of Transfer Water for

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M&I Users that the Water Authority wishes to purchase for that Year as described in Section 4.b.i of the Transfer Agreement.

1. The Water Authority shall sub-allocate Transfer Water made available by the Exchange Contractors for M&I Users in any Year as follows:

a. If the Transfer Water made available for M&I Users during a particular Year is adequate to cover all of the Transfer Water requested by the M&I Users pursuant to Section 9.B. above for that Year, the Water Authority shall allocate the Transfer Water made available for M&I Users as follows: San Benito County Water District (SBCWD), 5% (up to ___ acre-feet); San Luis Water District (SLWD), 3% (up to ___ acre-feet); Santa Clara Valley Water District (SCVWD), 87% (up to ___ acre-feet); and Westlands Water District (WWD), 5% (up to ___ acre-feet), or any other allocation mutually agreed by these M&I contractors.

b. If the Transfer Water made available for M&I Users during a particular Year is inadequate to cover the combined quantities of Transfer Water requested by SBCWD, SLWD, SCVWD, and WWD pursuant to Section 9.B. above, the Water Authority shall allocate the available M&I water based on the following allocation: 5% to SBCWD, 3% to SLWD, 87% to SCVWD, and 5% to WWD. If any participating M&I User chooses not to take its allocation, that portion of the M&I water shall be allocated to the remaining participating M&I Users based on their proportional share of their M&I historic use, or upon any other allocation mutually agreed upon by the M&I Users.

2. In the event Transfer Water is reduced under any applicable provision of the Transfer Agreement, the allocation for M&I Users will be reduced proportionately from ___ acre-feet and the available allocation will be sub-allocated between M&I Users as provided in Section 9.B.1.b above.

C. Reclamation's Allocation, Election Not to Purchase, and Water Authority Obligation to Purchase in Certain Years. Reclamation shall have the right to purchase for refuge supply purposes in each Year up to the maximum allocation for Reclamation set forth in Exhibit "B" determined in reference to the corresponding CVP South-of-Delta Contract Allocation for Irrigation for such Year, on the same terms and conditions as set forth in the Transfer Agreement. Under Section 5(c) of the Transfer Agreement, Reclamation may be unable to purchase all its allocation of Transfer Water during such Year. In years in which the CVP south-of-Delta contract allocation for irrigation is 0% through 45%, the allocation for the Water Authority shall be

Commented [RH1]: Subject to final allocation among activity agreement members

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increased by the amount Reclamation does not purchase, and the Activity Agreement Members hereby agree to purchase such water. In years in which the CVP south-of-Delta contract allocation for irrigation is 46% or greater, the Water Authority may but does not guarantee that it will purchase the water that Reclamation does not purchase, and the Activity Agreement Members do not agree to purchase such water.

D. Notice of Allocation. The Water Authority will promptly calculate the respective allocations of Transfer Water for Irrigation Users and M&I Users pursuant to the terms of the Transfer Agreement and Exhibit “B” and shall notify the Activity Agreement Members of the amount of their respective allocations for the respective Water Year.

E. Reallocation. An Activity Agreement Member may obtain the written agreement of any other Activity Agreement Member(s) to accept its allocated share of Transfer Water, or a portion thereof, and the obligations under this Activity Agreement of the Activity Agreement Member arranging such substitution.

F. Reallocation to WWD. By May 20th of each Year, each Activity Agreement Member wishing to reallocate all or some portion of the Transfer Water allocated to it under this Activity Agreement for such Year to WWD shall provide written notice to WWD and the Water Authority of the quantity to be reallocated. Each Activity Agreement Member providing such notice hereby agrees that the quantity specified in the reallocation notice shall be delivered to WWD, and WWD agrees to accept and purchase such reallocated quantity in accordance with the terms of this Activity Agreement and the Transfer Agreement and to relieve each Activity Agreement Member providing such notice of its respective obligation to purchase the reallocated quantity for such Year. Nothing in this Section 9.F. precludes an Activity Agreement Member from reallocating all or some portion of the Transfer Water allocated to it under this Activity Agreement to any Activity Agreement Member(s) pursuant to Section 9.E.

10. PAYMENT FOR ACTIVITY AGREEMENT EXPENSES AND FOR TRANSFER COSTS

A. The Water Authority, in consultation with the Activity Agreement Members, will develop a process for payment of costs and timing of payments based on the principles set forth below in this Section 10.

B. Following annual budget approval, the Water Authority will bill each Activity Agreement Member for their allocated share of approved, budgeted Activity Agreement Expenses;

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such allocated share will be based on the percentage derived by dividing each Activity Agreement Member's CVP contract quantity for irrigation and M&I in acre-feet by the Activity Agreement Members' total CVP contract value for irrigation and M&I in acre-feet, and payment will be due at the same time as payment for all other amounts included on such billing. Additional Activity Agreement Expenses will be included in subsequent billings as approved and/or incurred.

C. Pursuant to Section 4(d) of the Transfer Agreement, the Exchange Contractors will invoice the Water Authority for the cost of Transfer Water subsequent to the last day of each month during which the Exchange Contractors have made Transfer Water available to the Water Authority. As soon as the Water Authority receives the invoice and verifies the deliveries to the Activity Agreement Members during such period, the Water Authority shall bill the Activity Agreement Members. The Activity Agreement Members shall remit payment upon receipt of the Water Authority's invoice, so that the Water Authority can timely pay the Exchange Contractors.

D. In addition to the cost of Transfer Water payable to the Exchange Contractors, each Activity Agreement Member hereby agrees to pay to Reclamation and the Water Authority those costs for Transfer Water described in Section 4(c) of the Transfer Agreement.

E. Each Activity Agreement Member hereby agrees to pay to the Water Authority any and all costs incurred by the Water Authority on account of such Activity Agreement Member's participation in and obligations under the Transfer Agreement, including but not limited to: (1) interest on late payments as provided in Section (4)(d) of the Transfer Agreement; (2) reimbursement of foregone interest on Water Authority accounts, if any; and (3) any other costs incurred by the Water Authority because of such Activity Agreement Member's late payment.

F. Each Activity Agreement Member shall be bound to accept and pay for the costs of such Member's allocated share of Transfer Water, except for the Transfer Water such Member reallocates pursuant to Sections 9.E and 9.F of this Agreement. The Water Authority shall have no responsibility to track changes in allocations or in payment obligations resulting from reallocations made pursuant to Sections 9.E or 9.F of this Agreement until it receives a copy of the writing or notice memorializing the allocation adjustment.

G. Within sixty (60) days following the end of each Fiscal Year during the term of this Activity Agreement, the Water Authority compare the total payments made by each Activity Agreement Member during the year to the total annual amount due from each Activity Agreement Member. The amount due will be calculated by applying the total annual Activity Agreement

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Expenses including Transfer Water costs to a percentage that is based on each Activity Agreement Member's amount of Transfer Water in acre-feet purchased under this Agreement divided by the total amount of Transfer Water in acre-feet purchased by all Activity Agreement Members under this agreement. However, if there are no transfers in a Fiscal Year, the allocation as described in Section 10.B shall apply. Immediately following such calculation, the Water Authority will provide notice of credits or bills for additional charges to the Activity Agreement Members. Each Activity Agreement Member may elect to obtain refunds or to apply any credit balance and will remit payment of bills for additional amounts within thirty (30) days.

H. Each Activity Agreement Member agrees to hold harmless the Water Authority, all other Activity Agreement Members, and all Water Authority members who are not participants in the Activity Agreement from obligations incurred by the Water Authority in order to acquire the Activity Agreement Member's respective share of the water transferred from the Exchange Contractors pursuant to this Activity Agreement.

11. SOURCE OF PAYMENTS

Each Activity Agreement Member agrees that it will, at all times, have sufficient money to meet its obligations hereunder and under the JPA Agreement. Each Activity Agreement Member hereby confirms that the Water Authority and other Activity Agreement Members are third party beneficiaries of such Activity Agreement Member's obligations under this Activity Agreement and may take such actions in law or in equity to enforce payments hereunder.

12. INDEMNIFICATION OF AUTHORITY MEMBERS WHO DO NOT PARTICIPATE IN THIS AGREEMENT

The Activity Agreement Members shall hold the Water Authority and each of its members who is not an Activity Agreement Member, free and harmless from and indemnify each of them against any and all costs, losses, damages, claims, and liabilities arising from this Activity Agreement. This indemnification obligation includes the obligation of the Activity Agreement Members to defend the Water Authority, and all members of the Water Authority which are not participants in the Activity Agreement, at the sole expense of the Activity Agreement Members, in any action or proceeding brought against the Water Authority or any of its members not participating in the Activity Agreement to recover any such costs, losses, damages, claims, or liabilities arising from this Activity Agreement.

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13. TERM

A. This Activity Agreement shall take effect on January 1, 2024 (“**Effective Date**”), assuming execution by the Water Authority and at least two (2) Water Authority members prior to that date, and will be retroactive for costs incurred negotiating and developing the Transfer Agreement and this Activity Agreement and will remain in full force and effect through the term of the Exchange Contractors 2024-2025 Transfer Agreement, or until all obligations arising under this Activity Agreement and the Transfer Agreement have been satisfied, whichever comes later.

B. In the event the Exchange Contractors 2024-2025 Transfer Agreement does not take effect or is rescinded or terminated prior to December 31, 2025, this Activity Agreement shall likewise terminate upon all Activity Agreement Members satisfying all obligations, including all payment obligations, arising under this Activity Agreement.

C. This Activity Agreement may be extended without formal amendment being required in the event of any renewal or extension of the Exchange Contractors 2024-2025 Transfer Agreement for an additional Year or Years, by attaching a new Exhibit “B” to this Activity Agreement setting forth any revised quantities or allocations among Reclamation, Irrigation Users, and M&I Users.

14. WITHDRAWAL FROM FURTHER PARTICIPATION

A. Withdrawal. An Activity Agreement Member may withdraw from this Agreement at any time by obtaining the agreement of one or more other Activity Agreement Members to fully assume the benefits and the obligations pertaining to the withdrawing Activity Agreement Member and by satisfying the process and requirements set forth in this Section 14.

B. Notice and Effective Date. An Activity Agreement Member may withdraw from this Activity Agreement at any time by providing written notice to the Water Authority and the other Activity Agreement Members. The withdrawal shall be effective thirty (30) days after sending the written notice.

C. Payment of Obligations. Withdrawal is conditioned upon the withdrawing Activity Agreement Member ensuring to the satisfaction of the other Activity Agreement Members that there are no adverse impacts to those members from the withdrawal. This may occur via the withdrawing Activity Agreement Member’s payment or agreement to pay its share of all debts, liabilities, and obligations of the Water Authority pursuant to this Activity Agreement and incurred prior to the effective date of such withdrawal. A withdrawing party shall, within thirty (30) days

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of the withdrawal date, pay all such Activity Agreement Member's financial obligations incurred prior to such withdrawal date pursuant to the terms of this Activity Agreement or enter into an agreement acceptable to the Water Authority for continuing payment of such obligations until fully paid.

D. Rights Following Withdrawal. As of the withdrawal date, all rights of participation in this Activity Agreement shall cease for the withdrawing Activity Agreement Member.

E. Obligations Following Withdrawal. Withdrawal shall not excuse the withdrawing Activity Agreement Member's performance of obligations imposed upon that party by any judgment which has been entered by a court of competent jurisdiction or regulation to which the Water Authority or the Activity Agreement Members are subject and that arise from or are related to activities of the Activity Agreement conducted during the period when the withdrawing Activity Agreement Member participated in this Activity Agreement. Furthermore, the indemnification obligations set forth in Section 12 of this Activity Agreement shall survive a party's withdrawal from this Activity Agreement for activities under this Activity Agreement conducted during the period when the withdrawing Activity Agreement Member participated in this Activity Agreement.

15. ADMISSION OF NEW MEMBERS

After January 1, 2024, no additional members of the Water Authority may become participants of this Activity Agreement without the written consent of all of the other Activity Agreement Members and of the Board of Directors. The admission of any Activity Agreement Member pursuant to this section shall be documented by that new Activity Agreement Member signing this Activity Agreement. Upon admission of a new Activity Agreement Member, the parties shall agree to the participation percentage of such new Activity Agreement Member, to be documented in an amendment to this Activity Agreement and Exhibit "B" to this Activity Agreement.

16. MISCELLANEOUS

A. Amendments. Except for an extension provision as described in Section 13, this Activity Agreement may be only amended in writing executed by the parties hereto.

B. Assignment; Binding on Successors. Except as otherwise provided in this Activity Agreement, the rights and duties of the Activity Agreement Member may not be assigned or

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delegated without the written consent of the Water Authority. Any attempt to assign or delegate such rights or duties in contravention of this Activity Agreement shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Water Authority then in effect. This Activity Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Water Authority and the Activity Agreement Members.

C. Counterparts. This Activity Agreement may be executed by the Water Authority and the Activity Agreement Members in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. This Agreement, if executed in counterparts, will be valid and binding on a party as if fully executed as on one original.

D. Choice of Law. This Activity Agreement shall be governed by the laws of the State of California.

E. Severability. If one or more clauses, sentences, paragraphs or provisions of this Activity Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Activity Agreement Members and the Water Authority that the remainder of the Activity Agreement shall not be affected thereby.

F. Headings. The titles of sections of this Activity Agreement are for convenience only and no presumption or implication of the intent of the parties as to the construction of this Activity Agreement shall be drawn therefrom.

G. Reasonable Cooperation. Activity Agreement Members will reasonably cooperate with each other and the Water Authority to perform the obligations under this Activity Agreement, assist the Water Authority, when necessary, in carrying out its obligations under any and all of the water transfer agreements contemplated herein, and to carry out the purpose and intent of this Agreement.

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IN WITNESS WHEREOF, the Members and the Water Authority have executed this Activity Agreement as of the date appearing next to their respective signature lines:

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: _____
Name: _____
Title: _____
Date: _____

ACTIVITY AGREEMENT MEMBERS

Agency Name: _____ Agency Name: _____
By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____
Date: _____ Date: _____

Agency Name: _____ Agency Name: _____
By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____
Date: _____ Date: _____

Agency Name: _____ Agency Name: _____
By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____
Date: _____ Date: _____

Agency Name: _____ Agency Name: _____
By: _____ By: _____
Name: _____ Name: _____

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Title: _____ Title: _____

Date: _____ Date: _____

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EXHIBIT A
EXCHANGE CONTRACTORS 2024-____ TRANSFERS
ACTIVITY AGREEMENT MEMBERS

[LIST]

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EXHIBIT B

**ALLOCATION AMONG RECLAMATION, IRRIGATION USERS, AND M&I USERS
BASED ON CVP SOUTH-OF-DELTA CONTRACT ALLOCATON FOR IRRIGATION**

SOD Ag Allocation (%)	Reclamation (AF)	SLDMWA (AF)	Total (AF)
0			
5			
10			
15			
20			
25			
30			
35			
40			
45			
50			
55			
60			
65			
70			
75			
80			
85			
90			
95			
100			

EXHIBIT C

IRRIGATION USERS' CONTRACT QUANTITY/ALLOCATION PERCENT

Participants	Contract Quantity (AF)	Allocation Percentage (%)

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