



## MEMORANDUM

TO: SLDMWA Water Resources Committee/Board of Directors, Alternates

FROM: Frances Mizuno, Special Projects Administrator

DATE: June 2, 2021

RE: Resolution Including CEQA Exemption for and Authorizing Execution of Agreement For The Transfer Of Water By and Among the Oakdale Irrigation District, South San Joaquin Irrigation District, and the San Luis & Delta-Mendota Water Authority

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### BACKGROUND

The Water Authority has previously entered into Agreements for release of water by Oakdale and South San Joaquin Irrigation Districts (OID/SSJID), including in 2018 and again in early 2021. These agreements allow for OID/SSJID to make available water at Goodwin Dam for release by the Bureau of Reclamation (Reclamation) for additional fishery enhancement pulse flow on the Stanislaus River during the April/May period. The Water Authority and the Department of Water Resources (DWR) agree to pay OID/SSJID for the released water. The released water supports additional pumping at the Delta pumps at an inflow to export ratio of 1:1 where 50% of the water is available to DWR at the Banks Pumping Plant and the remaining 50% at Jones Pumping Plant (Jones). Although the Water Authority and OID/SSJID executed such an agreement earlier this year, the releases were not approved by Reclamation and did not occur as hoped.

There is a new opportunity for OID/SSJID to make available up to 100,000 acre-feet of conserved water stored in Tulloch Reservoir and released at Goodwin Dam, to be pumped at Jones Pumping Plant in the July through September period. Under this proposal, the cost to be paid to OID/SSJID for the transfer water will be \$400/AF. The transfer is subject to approval by Reclamation, the State Water Resources Control Board; it is a one-year transfer that is statutorily exempt from the California Environmental Quality Act. The Water Authority would make the transfer water available to those member agencies that participate in the purchase of this water through a Letter Agreement with the Water Authority.

### ISSUE FOR DECISION

Whether the Water Resources Committee should recommend, and the Board of Directors should adopt the Resolution including CEQA exemption for and authorizing execution of an Agreement

for Water Transfer by and Among the Oakdale Irrigation District, South San Joaquin Irrigation District, and the San Luis & Delta-Mendota Water Authority.

**RECOMMENDATION**

Staff recommends adoption of the proposed Resolution.

**ANALYSIS**

Adopting the Resolution would allow Water Authority members to purchase much needed supplemental water in early summer to offset the expected delay in delivery of North of Delta transfer water. It is anticipated that Reclamation will need to hold the purchased North of Delta transfer water in storage in Shasta Reservoir to assist in maintaining Shasta cold water pool for later release in late summer/early fall. If the Resolution is not adopted, the Water Authority would miss out on this opportunity.

The transfer is statutorily and categorically exempt from the California Environmental Quality Act because it is a one-year transfer subject to approval by the State Water Resources Control Board. Ongoing delivery and receipt of water for M&I and agricultural purposes will continue with no expansion of service and no new facilities constructed because water will be delivered and received for existing beneficial uses through existing facilities.

**BUDGET**

All costs related to the purchase will be paid by members participating in the purchase and therefore there is no impact to the Water Authority's budget.

**ATTACHMENTS**

1. Proposed Resolution
2. Agreement for Release of Water By and Among the Oakdale Irrigation District, the South San Joaquin Irrigation District and the San Luis & Delta-Mendota Water Authority

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**

**RESOLUTION NO. 2021-\_\_\_**

**RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT FOR THE TRANSFER OF WATER BY AND AMONG THE OAKDALE IRRIGATION DISTRICT, THE SOUTH SAN JOAQUIN IRRIGATION DISTRICT, AND THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY AND AUTHORIZING ACTIONS RELATED THERETO; CEQA EXEMPTION**

**WHEREAS**, the San Luis & Delta-Mendota Water Authority (“Water Authority”) agricultural water service and repayment contractor members received an initial allocation of 5% of their full contractual supply for irrigation and 55% for municipal and industrial (“M&I”) uses for the 2021 water year, and on May 26, 2021, the Bureau of Reclamation (“Reclamation”) reduced these allocations to 0% and 25%; and

**WHEREAS**, the Board of Directors of the Water Authority (the “Board”) has considered a draft of that certain Agreement for the Transfer of Water By and Among the Oakdale Irrigation District (“OID”), the South San Joaquin Irrigation District (“SSJID”), and the San Luis & Delta-Mendota Water Authority (“2021 OID-SSJID Transfer Agreement”), a copy of which has been presented to the Board, is attached to this Resolution as **Exhibit A**, and is on file with the Secretary hereof; and

**WHEREAS**, under the 2021 OID-SSJID Transfer Agreement, OID and SSJID would transfer up to 100,000 acre-feet of conserved post-1914 water rights water stored water in Old Melones and Tulloch to be released at 500 cfs per day from July 1 through September 30, 2021, to be delivered at Tulloch to effectuate the water transfer; and

**WHEREAS**, on May 10, 2021, Governor Newsom issued a Proclamation of a State of Emergency (“Proclamation”), attached to this Resolution as **Exhibit B**, to address the severe drought condition, which orders the State “to expeditiously consider requests to move water to areas of need, including requests involving voluntary water transfers, forbearance agreements, water exchanges or other means,” and “to prioritize transfers that retain a higher percentage of water in upstream reservoirs on the Sacramento, Feather, and American Rivers for release later in the year,” and suspends environmental review required by the California Environmental Act (“CEQA”) for purposes of carrying out or approving this and other directives; and

**WHEREAS**, the water transfer under the 2021 OID-SSJID Transfer Agreement would accomplish the two directives referenced in the Proclamation, by providing water earlier in the summer to areas severely and adversely impacted by drought, which offsets the impact to those areas that will not receive the North of Delta transfer water until later this water year or next

water year to allow the transfer water to assist in maintaining cold water pool in Shasta Reservoir for later release in the summer and fall and for the benefit of salmon; and

**WHEREAS**, the water transfer will carry out the directives in the Proclamation and will prevent or mitigate the impacts of the drought emergency, and is also statutorily exempt from CEQA pursuant to Water Code section 1729 and title 14 of the Cal. Code of Regulations, section 15282(u), because it involves a one-year transfer of water subject to approval by the State Water Resources Control Board, and is statutorily exempt pursuant to Public Resources Code section 21080(b)(4) and title 14 of the Cal. Code of Regulations, section 15269(c) because it involves specific actions necessary to prevent or mitigate the drought emergency, and is categorically exempt from CEQA pursuant to title 14 of the Cal. Code of Regulations, section 15301 because it involves operation of existing facilities with no or negligible expansion of use; and

**WHEREAS**, execution and implementation of the 2021 OID-SSJID Transfer Agreement is in the public interest of the Water Authority because it will help improve the water supply available to its member agencies, and because availability of the transfer water south of the Delta will generate additional revenues to assist the Water Authority in implementing its obligation to operate and maintain the Delta-Mendota Canal and related facilities required by its agreement with Reclamation during a year of severely reduced water allocation and budget constraints related to such reductions.

**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 finds that the 2021 OID-SSJID Transfer Agreement is statutorily and categorically exempt from CEQA because the 2021 OID-SSJID Transfer Agreement furthers the directives in the Proclamation, involves specific actions necessary to prevent or mitigate the drought emergency, involves a one-year water transfer subject to approval by the State Water Resources Control Board, and involves the operation of existing facilities with no or negligible expansion of use.

Section 3. The Executive Director or Chief Operating Officer is hereby authorized and directed to execute the 2021 OID-SSJID Transfer Agreement substantially in the form presented to the Board and on file with the Secretary hereof, subject to such additions, deletions and other revisions as the Executive Director shall approve prior to execution.

Section 4. The authorization granted to the Executive Director and Chief Operating Officer under Section 3 of this Resolution is conditioned upon the written consent of at least one Water Authority member agency, in a letter agreement, to purchase the water made available through the 2021 OID-SSJID Transfer Agreement on the finally negotiated terms.

Section 5. The Executive Director, Chief Operating Officer, and any Water Authority employees, consultants, or agents directed by the Executive Director are further authorized and directed to take such additional steps, and to execute such additional documents, as may be required or reasonably necessary or convenient for completing and implementing the transfer activities authorized by this Resolution.

**PASSED, APPROVED, AND ADOPTED** this 10<sup>th</sup> day of June, 2021, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

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

Attest:

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Federico Barajas, Secretary

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I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the San Luis & Delta-Mendota Water Authority, a California joint powers agency, at a regular meeting of the Board of Directors thereof duly called and held on the 10<sup>th</sup> day of June, 2021.

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Federico Barajas, Secretary

**AGREEMENT FOR THE TRANSFER OF WATER BY AND AMONG THE  
OAKDALE IRRIGATION DISTRICT, THE SOUTH SAN JOAQUIN  
IRRIGATION DISTRICT, AND THE SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY.**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and among the Oakdale Irrigation District (“OID”), the South San Joaquin Irrigation District (“SSJID”) (collectively, the “Districts”), and the San Luis & Delta-Mendota Water Authority (“SLDMWA”).

**RECITALS**

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

WHEREAS, the Districts have pre-1914 adjudicated water rights and post 1914 water rights to divert and store water from the Stanislaus River Basin; and

WHEREAS, the Districts and the Bureau of Reclamation (“Reclamation”) entered into a 1972 Agreement to settle the districts protest of Reclamation’s application to appropriate water from the Stanislaus River; and

WHEREAS, the 1972 Agreement was superseded by the 1988 Agreement between the Districts and Reclamation on how operations were to work on the Stanislaus River to protect the Districts’ senior water rights; and

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

WHEREAS, SLDMWA is comprised of 27 member agencies representing approximately 2,100,000 acres of land within the western San Joaquin Valley, San Benito, and Santa Clara Counties; and

WHEREAS, 25 of SLDMWA’s 27 member agencies receive water from the federal Central Valley Project (“CVP”) under water service, repayment, exchange/settlement, or refuge contracts; and

WHEREAS, CVP agricultural water service and repayment contractors South-of-Delta have received an allocation of zero (0)% of their contract water supply; and

WHEREAS, on May 10, 2021, the Governor declared an emergency due to the drought, and two of the goals of the drought declaration by the Governor, among others, is to: (1) move water, where appropriate, to areas of need, and (2) maintain and improve storage in reservoirs, including Shasta Reservoir, and

WHEREAS, this water transfer will accomplish both of those goals, by providing water earlier in the summer to areas severely and adversely impacted by drought, which

offsets the impact to those areas of maintaining in Shasta Reservoir North of Delta transfer water until later this water year or into next water year to assist in maintaining cold water pool in Shasta Reservoir for later release in the summer and fall and for the benefit of salmon.

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

### **AGREEMENT**

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

(a) “Parties” means the Districts and SLDMWA.

(b) “Delivery” means the Districts’ water made available at Tulloch Reservoir and released at Goodwin Dam and measured at Goodwin Gauge in July, August, and September of 2021. The Districts will release the water at Goodwin Dam on the schedule developed pursuant to Paragraph 14 of this Agreement. This definition is intended to include the grammatical variations of the term “delivery” including “deliver” and “delivered,” where such term is used in reference to water.

(c) “Base flow” means flows released by Reclamation from Goodwin Dam necessary to meet terms, conditions, or other regulatory requirements applicable to operations of Central Valley Project facilities on the Stanislaus River in 2021.

2. **TERM:** This Agreement shall become effective upon execution by all Parties and shall terminate on December 31, 2021 or upon final payment by SLDMWA of all costs attributable to this Agreement, whichever occurs later.

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

(a) Upon request by SLDMWA, the Districts agree to make up to 100,000 acre-feet of water available at Goodwin Dam from July 1 to September 30 of 2021. No water shall be released under this Agreement, and SLDMWA shall not be obligated to pay for any flows released, unless the contact listed for SLDMWA in Paragraph 20 has approved both the release and Delivery.

(b) The water made available for Delivery will be made available at Goodwin Dam by the Districts in accordance with the requirements set forth in Paragraph 10.

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

(a) The Districts will submit a change in place of use petition to the State Water Resources Control Board for this transfer.



(b) Pursuant to the Governor's May 10, 2021 drought emergency declaration, the Governor suspended environmental review required by California Environmental Quality Act ("CEQA") and regulations adopted pursuant thereto for carrying out or approving certain actions, and those certain actions include the transfer that will be effectuated pursuant to this Agreement, which is a one-year transfer subject to approval by the State Water Resources Control Board.

(c) SLDMWA will work with Reclamation to ensure compliance with the National Environmental Policy Act (NEPA) for the water transfer.

5. **PURCHASE PRICE**: SLDMWA agrees to pay to the Districts four hundred dollars (\$400) per acre-foot for up to 100,000 acre-feet of Delivery.

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

7. **WATER MEASUREMENT AND DELIVERY**: Districts shall provide up to 100,000 acre-feet in Goodwin Dam that is delivered. The quantity of transfer water shall be based on the actual flows released by the Districts from Goodwin Dam in excess of the Base Flow. For the purposes of this Agreement, the flow volume for which Districts will be in accordance with Paragraph 5 and will be measured as the Goodwin releases exceeding the Base Flow. A Delivery that is released from Goodwin Dam shall be measured on a daily basis by and confirmed by Reclamation at the Goodwin Gauge. The Districts and SLDMWA acknowledge that Reclamation shall be responsible for determining and verifying the flow, amount of release for transfer and schedule of the Delivery.

8. **PAYMENT**:

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

(b) SLDMWA shall remit payment within sixty (60) days of receipt of the invoice.

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

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

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

- (b) The 1988 Agreement and Stipulation with Reclamation;
- (c) The Tulloch Enhancement Agreement with PG&E, as it now exists and as modified from time to time;
- (d) The Goodwin Agreement, as it now exists and as modified from time to time;
- (e) The terms and conditions of Federal Energy Regulatory Commission licenses, as they now exist, and as they may be amended and/or renewed upon relicensing, including but not limited to those licenses held for Tulloch and Goodwin Dams;
- (f) The rights of landowners, within the boundaries of OID or SSJID, to the beneficial use of their respective District's water as relates to the delivery of water purchased pursuant to this Agreement;
- (g) Applicable federal and state laws now in existence, and as modified from time to time, which may affect the Districts' rights or obligations; and
- (h) The rights of the cities of Lathrop, Manteca, Escalon, and Tracy pursuant to each city's Water Supply Development Agreement with SSJID.

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

**11. SLDMWA LIMITING CONDITIONS:** The obligation of SLDMWA to pay for Delivery is subject to Reclamation having capacity at Jones Pumping Plant to pump the additional transfer water. If Reclamation is unable to pump the transfer water made available at Jones Pumping Plant, the Parties may attempt to reschedule the water transfer, or in the alternative, any Party may elect to terminate this Agreement by providing notice to the other Parties consistent with Paragraph 20, or the Parties can meet and agree to a new release and diversion rate for the transfer water. If this Agreement is terminated, SLDMWA shall only be obligated to pay Districts for the quantity of water Districts delivered prior to the Agreement terminating.

**12. DELIVERY:**

(a) Consistent with this Agreement and specifically Paragraph 7, the Districts will make the Delivery available at Goodwin Dam on a schedule developed in consultation with the Districts, Reclamation and SLDMWA. The delivery of the water

by the Districts will occur only after Reclamation, the Districts, and SLDMWA meet and receive assurances from Reclamation that the water to be released will be diverted at the 1:1 ratio at Jones Pumping Plant. If the water to be transferred cannot be diverted at the 1:1 ratio, then pursuant to Paragraph 13 or 19, the Parties can reschedule the water or meet and confer to determine what water will be released, diverted and paid for, or terminate this Agreement.

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

**14. APPROVALS AND COSTS:** SLDMWA is solely responsible for any payment for Delivery. This Paragraph survives termination or expiration of this Agreement.

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

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

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

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

**19. TERMINATION:** Any party may elect to terminate this Agreement upon notice to the Parties by electronic mail consistent with Paragraph 20. That party providing the termination shall provide the other parties with the specific grounds on which it wishes to terminate the agreement.

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

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

**OAKDALE IRRIGATION DISTRICT**

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

**SOUTH SAN JOAQUIN IRRIGATION DISTRICT**

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

**SAN LUIS & DELTA- MENDOTA WATER AUTHORITY**

Pablo Arroyave, Chief Operating Officer  
P.O. Box 2157  
Los Banos, CA 95635  
Email: [pablo.arroyave@sldmwa.org](mailto:pablo.arroyave@sldmwa.org)  
Phone: (209) 826-9696

Notice shall be deemed given by operation of any of the following, whichever occurs earliest:

(a) Two (2) calendar days following mailing via regular or certified mail, return receipt requested,

(b) One (1) business day after deposit with any one-day delivery service assuring "next day" delivery,

(c) Upon actual receipt of notice, which, for notice by electronic mail, will be deemed received on the day the electronic mail is sent if the electronic mail is sent to an address or addresses listed in this Paragraph, or

(d) Upon transmission, if by facsimile.

The Parties shall promptly give written notice to each other of any change of address and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

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

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

**23. OTHER AGREEMENTS:** Nothing contained within this Agreement restricts the ability of the Districts to provide water services and sales to others as authorized by law which do not unreasonably interfere with Districts' obligations under this Agreement.

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

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

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

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

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

**PARTIES:**

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By: \_\_\_\_\_  
Federico Barajas, Executive Director

Date: \_\_\_\_\_

OAKDALE IRRIGATION DISTRICT

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

Date: \_\_\_\_\_

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: \_\_\_\_\_  
Peter Rietkerk, General Manager

Date: \_\_\_\_\_

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

**WHEREAS** climate change is intensifying the impacts of droughts on our communities, environment, and economy, and California is in a second consecutive year of dry conditions, resulting in drought or near-drought throughout many portions of the State; and

**WHEREAS** recent warm temperatures and extremely dry soils have further depleted the expected runoff water from the Sierra-Cascade snowpack, resulting in a historic and unanticipated estimated reduction of 500,000 acre feet of water – or the equivalent of supplying water for up to one million households for one year – from reservoirs and stream systems, especially in the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watersheds; and

**WHEREAS** the extreme drought conditions through much of the State present urgent challenges, including the risk of water shortages in communities, greatly increased wildfire activity, diminished water for agricultural production, degraded habitat for many fish and wildlife species, threat of saltwater contamination of large fresh water supplies conveyed through the Sacramento-San Joaquin Delta, and additional water scarcity if drought conditions continue into next year; and

**WHEREAS** Californians have saved water through conservation efforts, with urban water use approximately 16% below where it was at the start of the last drought years, and I encourage all Californians to undertake actions to further eliminate wasteful water practices and conserve water; and

**WHEREAS** on April 21, 2021, I issued a proclamation directing state agencies to take immediate action to bolster drought resilience and prepare for impacts on communities, businesses, and ecosystems, and proclaiming a State of Emergency to exist in Mendocino and Sonoma counties due to severe drought conditions in the Russian River Watershed; and

**WHEREAS** additional expedited actions are now needed in the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watersheds; and

**WHEREAS** it is necessary to expeditiously mitigate the effects of the drought conditions within the Klamath River Watershed Counties (Del Norte, Humboldt, Modoc, Siskiyou, and Trinity counties), the Sacramento-San Joaquin Delta Watershed Counties (Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Lake, Lassen, Madera, Mariposa, Merced, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba counties), and the Tulare Lake Watershed Counties (Fresno, Kern, Kings, and Tulare counties) to ensure the protection of health, safety, and the environment; and

**WHEREAS** under Government Code Section 8558(b), I find that the conditions caused by the drought conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to appropriately respond; and



**WHEREAS** under Government Code Section 8625(c), I find that local authority is inadequate to cope with the drought conditions; and

**WHEREAS** to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of, the drought conditions statewide, and under Government Code Section 8571, I find that strict compliance with various statutes and regulations specified in this proclamation would prevent, hinder, or delay the mitigation of the effects of the drought conditions in the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed Counties.

**NOW THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed Counties due to drought.

**IT IS HEREBY ORDERED THAT:**

1. The orders and provisions contained in my April 21, 2021 Proclamation remain in full force and effect, except as modified. State agencies shall continue to implement all directions from that proclamation and accelerate implementation where feasible.
2. To ensure that equipment and services necessary for drought response can be procured quickly, the provisions of the Government Code and the Public Contract Code applicable to procurement, state contracts, and fleet assets, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended to the extent necessary to address the effects of the drought in the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed Counties. Approval of the Department of Finance is required prior to the execution of any contract entered into pursuant to this provision.
3. To support voluntary approaches where hydrology and other conditions allow, the Department of Water Resources and the State Water Resources Control Board (Water Board) shall expeditiously consider requests to move water, where appropriate, to areas of need, including requests involving voluntary water transfers, forbearance agreements, water exchanges, or other means. Specifically, the Department of Water Resources and Water Board shall prioritize transfers that retain a higher percentage of water in upstream reservoirs on the Sacramento, Feather, and American Rivers for release later in the year. If necessary, the Department of Water Resources shall request that the Water Board consider changes to water rights permits to enable such voluntary movements of water. For actions taken in the Klamath River and Sacramento-San Joaquin Delta Watershed Counties pursuant to this paragraph, the following requirements of the Water Code are suspended:
  - a. Section 1726(d) requirements for written notice and newspaper publication, provided that the Water Board shall post notice on its website and provide notice through electronic subscription services where interested persons can request information about temporary changes; and



- b. Section 1726(f) requirement of a 30-day comment period, provided that the Water Board shall afford a 15-day comment period.
4. To ensure adequate, minimal water supplies for purposes of health, safety, and the environment, the Water Board shall consider modifying requirements for reservoir releases or diversion limitations—including where existing requirements were established to implement a water quality control plan—to conserve water upstream later in the year in order to protect cold water pools for salmon and steelhead, improve water quality, protect carry over storage, or ensure minimum health and safety water supplies. The Water Board shall require monitoring and evaluation of any such changes to inform future actions. For actions taken in the Sacramento-San Joaquin Delta Watershed Counties pursuant to this paragraph, Water Code Section 13247 is suspended.
5. To ensure protection of water needed for health, safety, and the environment in the Klamath River and Sacramento-San Joaquin Delta Watershed Counties, the Water Board shall consider emergency regulations to curtail water diversions when water is not available at water right holders' priority of right or to protect releases of stored water. The Department of Water Resources shall provide technical assistance to the Water Board that may be needed to develop appropriate water accounting for these purposes in the Sacramento-San Joaquin Delta Watershed.
6. To ensure critical instream flows for species protection in the Klamath River and Sacramento-San Joaquin Delta Watersheds, the Water Board and Department of Fish and Wildlife shall evaluate the minimum instream flows and other actions needed to protect salmon, steelhead, and other native fishes in critical streams systems in the State and work with water users and other parties on voluntary measures to implement those actions. To the extent voluntary actions are not sufficient, the Water Board, in coordination with the Department of Fish and Wildlife, shall consider emergency regulations to establish minimum drought instream flows.
7. Operative paragraph 4 of my April 21, 2021 Proclamation is withdrawn and superseded by the following, which shall apply to the Russian River Watershed identified in my April 21, 2021 Proclamation as well as the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed Counties:

To prioritize drought response and preparedness resources, the Department of Water Resources, the Water Board, the Department of Fish and Wildlife, and the Department of Food and Agriculture, in consultation with the Department of Finance, shall:

- a. Accelerate funding for water supply enhancement, water conservation, or species conservation projects.
- b. Identify unspent funds that can be repurposed to enable projects to address drought impacts to people, ecosystems, and economic activities.
- c. Recommend additional financial support for groundwater substitution pumping to support Pacific flyway habitat needs in the lower Sacramento River and Feather River portions of the Central Valley in the Fall of 2021.

8. Consistent with operative paragraph 13 of my April 21, 2021 Proclamation, the Department of Water Resources shall take actions, if necessary, to implement plans that address potential Delta salinity issues. Such actions may include, among other things, the installation and removal of, Emergency Drought Salinity Barriers at locations within the Sacramento-San Joaquin Delta Estuary. These barriers shall be designed to conserve water for use later in the year to meet state and federal Endangered Species Act requirements, preserve to the extent possible water quality in the Delta, and retain water supply for human health and safety uses. The Water Board and the Department of Fish and Wildlife shall immediately consider any necessary regulatory approvals needed to install Emergency Drought Salinity Barriers. For actions taken pursuant to this paragraph, Section 13247 and the provisions of Chapter 3 (commencing with Section 85225) of Part 3 of Division 35 of the Water Code are suspended.
9. To support the movement of water from areas of relative plenty to areas of relative scarcity in the Sacramento-San Joaquin Delta and Tulare Lake Watershed Counties, the Department of Water Resources shall expedite the consideration and, where appropriate, the implementation of pump-back delivery of water through the State Water Project on behalf of local water agencies.
10. To proactively prevent situations where a community runs out of drinking water, the Water Board, the Department of Water Resources, the Office of Emergency Services, and the Office of Planning and Research shall assist local agencies in identifying acute drinking water shortages in domestic water supplies, and shall work with local agencies in implementing solutions to those water shortages.
11. For purposes of carrying out or approving any actions contemplated by the directives in operative paragraphs 3, 4, 5, 6, 8, and 9, the environmental review by state agencies required by the California Environmental Quality Act in Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division are hereby suspended to the extent necessary to address the impacts of the drought in the Klamath River, Sacramento-San Joaquin Delta and Tulare Lake Watershed Counties. For purposes of carrying out the directive in operative paragraph 10, for any (a) actions taken by the listed state agencies pursuant to that directive, (b) actions taken by a local agency where the Office of Planning and Research concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b), Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division are hereby suspended to the extent necessary to address the impacts of the drought in counties where the Governor has proclaimed a drought state of emergency. The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.
12. To ensure transparency in state agency actions, the Water Board and Department of Water Resources will maintain on their websites a list of the activities or approvals by their agencies for which provisions of the Water Code are suspended under operative paragraphs 3, 4, or 8 of this proclamation.

13. To ensure that posting and dissemination of information related to drought emergency activities is not delayed while accessible versions of that information are being created, Government Code Sections 7405 and 11546.7 are hereby suspended as they pertain to the posting of materials on state agency websites as part of responding to the drought emergency, provided that any state agencies failing to satisfy these code sections shall make and post an accessible version on their websites as soon as practicable.

This proclamation is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**I FURTHER DIRECT** that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 10th day of May 2021.



GAVIN NEWSOM  
Governor of California

**ATTEST:**

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SHIRLEY N. WEBER, PH.D.  
Secretary of State