



REVISED PRE-PACKET

March 7, 2016

TO: San Luis & Delta-Mendota Water Authority Board of Directors, Alternates, and Interested Parties

FROM: Jason Peltier, Secretary (by Cheri)

RE: **Thursday, March 10, 2016, 9:30 a.m.  
Board of Directors' Regular Meeting**

Attached for your review in preparation of the **March 10, 2016**, Board of Directors' meeting are:

- 1) Notice & Agenda
- 2) Draft February 4, 2016 Meeting Minutes
- 3) Draft Resolution Authorizing Assistant Executive Director to Negotiate and Execute 2016 North-Of-Delta Water Purchase Agreements with Willing Sellers; Authorizing Negotiation and Execution of 2016 Forbearance Agreements Between Various Sacramento River Settlement Contractors, the United States Bureau of Reclamation and the San Luis & Delta-Mendota Water Authority; Making Determinations Under the California Environmental Quality Act and Authorizing Actions Related Thereto with attached supporting documents

Thank you, and please give us a call if you have any questions or concerns regarding this information.



**Notice of San Luis & Delta-Mendota Water Authority  
Board of Directors  
Regular Meeting  
Thursday, March 10, 2016, 9:30 a.m.  
842 6<sup>th</sup> Street, Los Banos**

**AGENDA**

1. Call to Order/Roll Call
2. Board to Consider Corrections or Additions to the Agenda of Items, as authorized by Government Code Section 54950 et seq
3. Opportunity for Public Comment

**Action Items**

4. **Board to Consider Approval of Minutes/Acceptance of Listed Financial Reports<sup>1</sup>**
  - a. **February 4, 2016 Meeting Minutes**
  - b. **Financial & Expenditures Report, Mederios/Wamocho**
5. **Board to Consider Finance & Administration Committee Recommendation to Accept the Treasurer's Report for the Quarter Ending December 31, 2015, Mederios/Wamocho**
6. **Board to Consider Resolution Authorizing Assistant Executive Director to Negotiate And Execute 2016 North-Of-Delta Water Purchase Agreements With Willing Sellers; Authorizing Negotiation And Execution of 2016 Forbearance Agreements Between Various Sacramento River Settlement Contractors, the United States Bureau Of Reclamation and the San Luis & Delta-Mendota Water Authority; Making Determinations Under the California Environmental Quality Act and Authorizing Actions Related Thereto, Mizuno/Rathmann**

**Report Items**

7. Committee Reports
  - a. Water Resources Committee Activities, Birmingham
  - b. Finance & Administration Committee Activities, Pucheu
  - c. O & M Technical Committee Activities, White
  - d. DHCCP Steering Committee, McIntyre
8. Self-Funding Report, Mederios
9. Administration Report
10. Operations & Maintenance Report

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<sup>1</sup> The Chairman may determine on his own or at the request of any Director or Alternate Director in the absence of the respective Director to consider separately or to table any sub-item in this Agenda Item.

11. San Luis Transmission Project Update, Mizuno
12. Operations Update, Boardman
13. Transfers Update, Mizuno
14. Water Policy Administrator Report, Azhderian
15. Executive Director's Report, Peltier
16. Drainage Activity
  - a. Grassland Basin Drainage Activity Report, Falaschi/Rathmann
  - b. Westside Regional Drainage Plan Report, Rathmann
  - c. San Joaquin Valley Drainage Authority, Rathmann

17. **CLOSED SESSION**

Conference with Legal Counsel on Anticipated Litigation – Initiation of Litigation Pursuant to paragraph (4) of Subdivision (d) of Government Code Section 54956.9 – 2 potential cases

Significant Exposure to Litigation Pursuant to Paragraph (2) or (3) of Subdivision (d) of Government Code Section 54956.9 – 2 potential cases

Conference with Legal Counsel on Existing Litigation Pursuant to paragraph (1) of Subdivision (d) of Section 54956.9

- A. San Luis & Delta-Mendota Water Authority et al. v. United States Department of Interior et al, U.S. District Court, E.D. Cal., Case No. 1:11-cv-00952-OWW-GSA (CVPIA 3411b case)
- B. Natural Resources Defense Council, et al. v. Salazar et al., U.S. Court of Appeals, 9th Cir., Appeal Case No. 09- 17661; Natural Resources Defense Council et al. v Jewell et al., U.S. District Court, E.D. Cal., Case No. 1:05-cv-01207, LJO-BAM (Old FWS – OCAP BO/Contracts)
- C. San Luis & Delta-Mendota Water Authority, et al. v. Salazar, et al., U.S. District Court, E.D. Cal., Case No. 1:09-CV-00407-OWW-DLB (Salazar/2008 Delta Smelt BiOp)
- D. San Luis & Delta-Mendota Water Authority and Westlands Water District v. Gary R. Locke, et al, U.S. District Court, E.D. Cal., Case No.1:09-CV-1053 (Locke/2009 NMFS BiOp)
- E. Central Delta Water Agency and South Delta Water Agency v. California Department of Water Resources, et al., Sacramento County Superior Court Case No. 34-2009-80000229 (Field Studies)
- F. Central Delta Water Agency v. State Water Resources Control Board et al., Sacramento County Superior Court Case No. 34-2010-80000520 (Petition to Prohibit CDO proceedings)
- G. Young, et al. v. State Water Resources Control Board et al., Case No. 39-2012-00286485-CU-WM-STK (Young)
- H. Modesto Irrigation District, et al. v. State Water Resources Control Board & Woods Irrigation Company, Sacramento County Superior Court Case No. 34-2011-80000803 (Complaint for Declaratory Relief re Woods Irrigation Company)
- I. San Luis & Delta-Mendota Water Authority et al. v. State Water Resources Control Board, et al., Sacramento County Superior Court Case No. 34-2013-800001486 (Dunkel Order)
- J. SWRCB Water Rights Complaints: Modesto Irrigation District, State Water Contractors, San Luis & Delta-Mendota Water Authority, Interested Persons in SWRCB CDO Enforcement Proceedings and/or Petitions for Reconsideration: Woods Irrigation Company; Pak & Young; Mussi et al; George Speckman Testamentary Trust (Water Rights Complaints)
- K. Pacific Coast Federation of Fishermen's Associations, California Sportfishing Protection Alliance, Friends of the River, San Francisco Crab Boat Owners Association, Inc., The Institute for Fisheries Resources, and Felix Smith v. Donald R. Glaser and San Luis & Delta-Mendota Water Authority, U.S. District Court, E.D. Cal., Case No. 2:11-CV-02980-KJM-CKD ("PCFFA v Glaser" or "GBP Citizens Suit")
- L. San Luis & Delta-Mendota Water Authority and Westlands Water District v. Delta Stewardship Council, et al., Sacramento County Superior Court Case No. 34-2013-80001500 (Delta Plan Litigation)
- M. San Luis & Delta-Mendota Water Authority and Westlands Water District v Jewell, et al., U.S. Court of Appeals, 9th Cir., Appeal Case Nos. 14-17493, 14-17506, 14-17515 and 14-17539; San Luis & Delta-Mendota Water Authority and Westlands Water District v Jewell, et al., U.S. District Court, E.D. Cal., No 1:13-CV-01232-LJO-GSA (Trinity Releases I)
- N. AquAlliance, et. al., v. U.S. Bureau of Reclamation, et. al., U.S. District Court, E.D. Cal., Case No. 1:15- CV-00754 LJO BAM (Challenge to Long-Term Transfer EIR/EIS)
- O. California Sportfishing Protection Alliance, et al. vs. United States Bureau of Reclamation, et al., U.S. District Court, E.D. Cal., Case No. 1-15-cv-00912-LJO-BAM (Federal WQCP/TUCP).

- P. Stanley Warden v. San Luis & Delta-Mendota Water Authority, Merced County Superior Court Case No. 15CV-01686 (Warden)
  - Q. San Luis & Delta-Mendota Water Authority and Westlands Water District v Jewell, et al., U.S. District Court, E.D. Cal., No 1:15-CV-01290-LJO-GSA (Trinity Releases II)
  - R. California Sportfishing Protection Alliance, et al. vs. California State Water Resources Control Board, et al., Alameda County Superior Court Case No. RG15780498 (State WQCP/TUCP).
  - S. San Luis & Delta-Mendota Water Authority v. Office of the Solicitor et al., U.S. District Court, E.D. Cal., Case No. 1:15-cv-01412-LJO-GSA (FOIA)
  - T. In re State Water Resources Control Board Petition Requesting Changes in Water Rights of the Department of Water Resources and U.S. Bureau of Reclamation for the California WaterFix Project (WaterFix Change Petition)
- 18. Return to Open Session
  - 19. Report from Closed Session, if any Required by Government Code Section 54957.1
  - 20. Reports Pursuant to Government Code Section 54954.2(a)(2) (15)
  - 21. ADJOURNMENT

*Persons with a disability may request disability-related modification or accommodation by contacting Cheri Worthy or Felicia Luna at the San Luis & Delta-Mendota Water Authority Office, 842 6<sup>th</sup> Street, P O Box 2157, Los Banos, California, telephone: 209/826-9696 at least 3 for regular or 1 for special day(s) before the meeting date.*

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY  
BOARD OF DIRECTORS ADJOURNED REGULAR MEETING - MINUTES  
FEBRUARY 4, 2016**

The Board of Directors of the San Luis & Delta-Mendota Water Authority convened at approximately 9:30 a.m. at 842 6<sup>th</sup> Street, in Los Banos, California for a regular meeting, with Chairman Mike Stearns presiding.

**Directors and Alternate Directors in Attendance**

**Division 1**

Bobby Pierce, Director - David Kaiser, Alternate  
Anthea Hansen, Director – Earl Perez, Alternate  
Rick Gilmore, Director

**Division 2**

Don Peracchi, Director  
William Bourdeau, Alternate for Sarah Woolf - Sarah Woolf via teleconference, not counted for quorum or towards any vote  
John Bennett, Director - Dennis Falaschi, Alternate  
Chris Hurd, Director

**Division 3**

Michael Stearns, Director & Chairman - Jeff Bryant, Alternate  
James Nickel, Director  
Ric Ortega, Director - Michael Gardner, Alternate

**Division 4**

Garth Hall, Alternate for Director Richard Santos  
Gary Kremen, Director  
Jeff Cattaneo, Alternate for John Tobias  
Joseph Tonascia, Director

**Division 5**

Bill Pucheu, Director – Berj Moosekian, Alternate  
Tom Birmingham, Director  
Thomas W. Chaney, Alternate for Division 5 Vacancy

**Authority Representatives Present**

Ara Azhderian, Water Policy Administrator  
Tom Boardman, Water Resources Engineer  
Darlene Neves, Accountant II

Joyce Machado, Accountant III  
Frances Mizuno, Assistant Executive Director  
Jason Peltier, Executive Director  
Jon Rubin, General Counsel  
Guy Wamocha, Supervisor of Accounting  
Tona Mederios, Director of Finance  
Diane Rathmann, Legal Counsel

### **Others in Attendance**

Anthony Fulcher, Santa Clara Valley Water District  
Erma Leal, USBR  
Jose Gutierrez, Westlands Water District  
Michael LeBarra, USBR  
Atomic Falaschi, Panoche Water District  
Janet Gutierrez, San Luis Water District  
John Beam, GWD Consultant  
Lauren Lane, Tranquillity Irrigation District  
Steve Stadler, James Irrigation District  
Mike Wade, California Farm Water Coalition  
Lon Martin, San Luis Water District  
Kyle Perez, Del Puerto Water District  
Marc Vanden, Patterson Irrigation District  
Don Wright  
John Beam, Consultant

#### **1. Call to Order/Roll Call**

Chairman Mike Stearns called the meeting to order and a roll call was held.

#### **2. Board to Consider Corrections or Additions to the Agenda of Items, as authorized by Government Code Section 54950 et seq.**

There were no additions or corrections to the agenda, however, Executive Director Peltier noted that the closed session would likely occur earlier than where listed on the agenda.

#### **3. Opportunity for Public Comment**

No public comment provided.

## ACTION ITEMS

### 4. Board to Consider Approval of Minutes/Acceptance of Listed Financial Reports

#### a. January 14, 2016 Meeting Minutes

The January 14, 2016 meeting minutes were reviewed. There were no additions or corrections made.

#### b. Financial & Expenditures Report

Supervisor of Accounting Guy Wamocha reported on various financial matters for the period ending December 31, 2015. Wamocha's report included a breakdown of receivables, cash activities, and amended budget-to-actual comparisons for the Activities Budget and noted that expenditures are approximately \$5.5 million with an amended budget of approximately \$7.8 million, which is about 13 percent or about \$1.014 million below the amended budget for the current fiscal year. Wamocha also reported on DMC budget to actuals, which were trending about 2.2 percent below the budget for the current fiscal year. Director of Finance Tona Mederios followed with the DHCCP report. Mederios reported that, in January 2016, the Water Authority invoiced the participating districts, excluding Westlands Water District, for debt service due March 1, 2016. Mederios explained that Westlands was excluded because it pays one hundred (100) percent of principle and interest on the debt service, the Water Authority then collects from all other participating districts and remits the money collected, with the bank refunding to Westlands the excess paid. Mederios concluded by noting that the 2009 note proceeds balance was \$4,233,341.40. Both reports were included in the meeting packet and are on file with the Secretary.

On motion of Director Pucheu, seconded by Director Gilmore, the Board unanimously approved the December 10, 2015 meeting minutes and accepted the financial reports, as presented. The vote on the motion was as follows:

AYES: Pierce, Hansen, Gilmore, Peracchi, Bourdeau, Bennett, Hurd, Stearns, Nickel, Ortega, Hall, Kremen, Cattaneo, Tonascia, Pucheu, Chaney

NAYS: None

ABSTENTIONS: Birmingham

### 5. Board to Consider Recommendation by the Water Resources Committee & Finance and Administration Committee to Approve the FY 16/17 Activity Agreements Budget and will Consider Recommendations by the O&M Technical Committee and Finance & Administration Committee to Approve Final O&M Budget

Assistant Executive Director Frances Mizuno summarized the approach to the O&M budget. Mizuno explained that Water Authority has attempted to maintain minimal staffing and, in particular, over the last few years, has left positions unfilled, to reduce expenditures. However, for the O&M budget, staff recommended filling unfilled positions, adding new positions, and adjusting salaries per the salary survey, which showed a need for a 2-15 percent increase, with a weighted average of 9%. The Finance & Administration Committee ("FAC") supported a salary adjustment and recommended an increase of a weighted average of three (3) percent a year over 3 years to bring Water Authority salaries in line with the most recent salary survey, while taking into account continuing dire water supply conditions. Mizuno continued by highlighting the line items from the O&M budget that caused an increase from the current O&M budget. Mizuno then turned to the EO&M budget. Mizuno explained that it too

would increase if the budget were approved. The increase was attributed to labor costs and to replace vehicles and equipment. Mizuno concluded this part of the presentation by noting that the budget was presented in detail to O&M Technical Committee and FAC and both recommended adoption by the Board.

Next, Executive Director Jason Peltier discussed the FY 16/17 Activity Agreements Budget. Peltier started by noting the schedule followed for development of the budget and the issues summary report. Peltier then focused on page 1-4 of the budget. Peltier discussed the three main prongs – legal, technical support, and legislative and public outreach. In the course of the budget development, there has been evolution of expenditures, particularly in the areas of technical and public outreach. Peltier noted the increase in the public outreach line item and the concerns raised at the Committee level that (1) the Water Authority staff was not sufficiently engaged in the *El Aqua* program, and (2) whether the investment translates into results. Peltier explained that he intends to engage more, if the budget is approved, but it has been and will remain very difficult to identify results of the investment, given the Water Authority's limited education role. Chair Stearns spoke in favor of the *El Aqua* program. Then, Peltier and Director Pucheu highlighted that the Committees' recommendation of the \$1,600,000 was conditioned on \$600,000 of that amount being made available only if matching funds were raised by persons or entities other than the Water Authority. Following those comments from Peltier and Pucheu, Alternate Cattaneo requested clarification on the line item for groundwater analysis. Mizuno explained those costs will be allocated to the beneficiaries. In addition, Alternate Cattaneo expressed concern with the amount budgeted for public outreach. Director Hansen also questioned the public outreach budget, particularly when compared with other expenditures. Director Kremen agreed with comments from Director Hansen. The open session was then adjourned to address the items listed on the Closed Session Agenda. See Item 18 below.

Upon returning to open session, Director Birmingham moved for approve the FY 16/17 Activity Agreements Budget and Final O&M Budget, as recommended by the Committees. Director Pucheu seconded the motion. Discussion on the motion followed. Alternative Hall expressed his wish that the O&M Budget were addressed separately from the Activity Agreements budget. Hall requested more dialog on the public outreach activity within the Activity Agreements budget and questioned the scale of investment. Hall also questioned the value of lobbying activity and the desire to understand the objectives of that effort. Director Hansen continued to express concern with the investment in the public outreach program, recognizing there are components of the program she supports. Hansen indicated her nay vote would be based on that concern. Hansen recognized the importance of the O&M budget, as well as other expenditures in the Activity Agreements budget. Director Hurd followed expressing his view that, if there is not support of the \$1.6 million, which amounts to a cost of about 1 percent of the budget for the district he represents, there is a great problem. Hurd indicated he will vote in favor of the motion. Kremen raised the question of whether the Water Authority should undertake certain actions identified in the budget. Birmingham noted the significant work that Water Authority staff and Water Resources and Finance & Administration Committees undertake to prepare budgets, with multiple meetings held allowing for detailed discussion, and the need for confidence in the Committees process. Hansen requested improved reporting on the *El Aqua* program. Peltier agreed.

The vote on the motion was as follows:

AYES: Pierce, Gilmore, Peracchi, Bourdeau, Bennett, Hurd, Stearns, Nickel, Ortega, Cattaneo,



Tonascia, Pucheu, Birmingham, Chaney  
NAYS: Hansen, Hall, Kremen  
ABSTENTIONS: None

**6. Board to Consider Finance & Administration Committee Recommendation to Approve the WY 16 O&M Rates**

Assistant Executive Director Frances Mizuno reported on the WY 16 O&M Rates. Mizuno explained that due to uncertainties in water supply allocations, the Water Authority staff proposed and the Finance & Administration Committee recommended approval of the current rates as the WY 16 O&M rates. Mizuno indicated that Water Authority staff will return in April, 2016, with a proposal to revise the rates based on the then determined water supply allocations. On motion of Director Pucheu, seconded by Director Gilmore, the Board approved the WY 16 O&M rates, as recommended. The vote on the motion was as follows:

AYES: Pierce, Hansen, Gilmore, Peracchi, Bourdeau, Bennett, Hurd, Stearns, Nickel, Ortega, Hall, Kremen, Cattaneo, Tonascia, Pucheu, Birmingham, Chaney

NAYS: None  
ABSTENTIONS: None

**7. Board to Consider Resolution Authorizing the San Luis & Delta-Mendota Water Authority to Request Basin Boundary Modifications Pursuant to Department of Water Resources Regulations Adopted Under the Sustainable Groundwater Management Act, Making Determination Under California Environmental Quality Act & Authorizing Related Actions**

Assistant Executive Director Frances Mizuno noted that she has been reporting on the assistance the Water Authority has provided some of its members with Sustainable Groundwater Management Act compliance. She then explained the process to request basin boundary modifications and the need by some of the Water Authority's member agencies for support in making such a request. Counsel Diane Rathmann summarized in detail the resolution before the Board. Based on a question from Director Hansen, Mizuno explained that there has been significant coordination with districts in other basins to ensure there are no unnecessary or duplicative expenditures. Steven Stadler supported Mizuno's response and the efforts of the Water Authority. Stadler explained that those seeking to add areas to a basin are incurring the associated costs. That approach is followed within all of the basins within the Water Authority's boundaries. On motion of Director Birmingham, seconded by Director Gilmore, the Board approved the resolution, as recommended. The vote on the motion was as follows:

AYES: Pierce, Hansen, Gilmore, Peracchi, Bourdeau, Bennett, Hurd, Stearns, Nickel, Ortega, Hall, Kremen, Cattaneo, Tonascia, Pucheu, Birmingham, Chaney

NAYS: None  
ABSTENTIONS: None

## REPORT ITEMS

### **8. Committee Reports**

#### **a. Water Resources Committee Activities**

Director Birmingham reported that the Water Resources Committee met to discuss the FY 16/17 Activity Agreements Budget. Birmingham also reported that the WRC discussed the potential for Reclamation to delay making the initial allocation of water to water service contractors until March, rather than February, given the unique uncertainties in hydrology and potential quantity of water available following the last four years of drought.

#### **b. Finance & Administration Committee Activities**

Director Pucheu reported that the Finance & Administration Committee also met to discuss the FY 16/17 Activity Agreements budget.

#### **c. O&M Technical Committee Activities**

There was meeting and thus no report

#### **d. DHCCP Steering Committee**

There was no meeting and thus no report.

March 7 and March 10 were identified as the next regularly scheduled meetings for the Committees and the Board respectively.

### **9. Self-Funding Report**

Joyce Machado, Accountant III, provided a summary of the self-funding report from Tona Mederios, Director of Finance, to Frances Mizuno, Assistant Executive Director, which was included in the meeting packet and is on file with the Secretary. Mizuno supplemented the report, indicating that she will attempt to restart discussions with the United States and the Friant Water Authority on the cost allocation for the Intertie.

### **10. Administration Report**

Frances Mizuno, Assistant Executive Director, informed the Board that there was nothing to report.

### **II. Operations & Maintenance Report**

Assistant Executive Director Frances Mizuno provided updates on four items. First, Mizuno noted that in January, 2016 the C.W. "Bill" Jones Pumping Plant operated with 4 units, which was the first time since December 2014; however, that lasted only 4 days. The Jones Pumping Plant has operated with 2 units for the majority of the time. Also, Mizuno reported that the Water Authority continues to address hyacinth, and, as a result of its efforts and low pumping levels, among other reasons, hyacinth has not caused problems at the Tracy Fish Facility. Next, Mizuno reported that the United States Bureau of Reclamation ("Reclamation") allocated approximately 9,400 acre-feet of water from Millerton Reservoir towards the San Joaquin River Restoration Program. Finally, Mizuno informed the Board that Reclamation tentatively approved rescheduling of 2013 water, and the formal decision will be reflected in the final Rescheduling Guidelines.

## **12. San Luis Transmission Project**

Assistant Executive Director Frances Mizuno reported that the United States Bureau of Reclamation cannot be the recipient of Transmission Improvement Project funding, absent Congressional authorization. Accordingly, the Water Authority will be working to obtain that authorization. With that authorization, the Water Authority has been informed that the SLTP would be eligible for the funding.

## **13. Operations Update**

Water Resources Engineer Tom Boardman reported that pumping at the C.W. “Bill” Jones Pumping Plant increased to 4 units for just a few days in January before having to decrease to three units due to turbidity concerns in the south delta. Jones pumping is currently restricted to two units and has been unable to pump about 100 thousand acre-feet (“TAF”) so far this year due to the Biological Opinions on Continued Operations of the CVP and SWP.

With the delta in excess conditions, the Coordinated Operations Agreement accounting has been suspended. The CVP owes the SWP about 100 TAF under the accounting for the Coordinated Operations Agreement while the SWP owes the CVP about 50 TAF under the export sharing account. However, Boardman estimates that the 50 TAF debt may be somewhat reduced because the CVP has recently been pumping a larger share of the allowable amount of export. The accounts are expected to be balanced in the coming weeks.

Boardman stated that Shasta Reservoir storage has increased to 2.4 million acre-feet (“MAF”) and must refill to about 3.8 MAF for a fully functioning temperature operation plan this summer. Folsom storage has refilled enough to require flood control releases this week.

CVP share of San Luis Reservoir remains very low due to restricted pumping. Boardman estimates that Reclamation owes about 20 TAF to CVP contractors due to borrowing that was necessary to meet its 2015 allocation commitments. In addition to 138 TAF of 2015 fall transfer water that was made available to CVP contractors this week, Boardman estimates that the amount of borrowed water yet to repaid in San Luis stands at about 158 TAF. Absent a consistent 3 unit operation at Jones through February, Reclamation will begin the 2016 contract year with little to no Project water in San Luis.

## **14. Transfers Update**

Assistant Executive Director Frances Mizuno began her report by confirming the United States Bureau of Reclamation determination of a 35 percent carriage water/river depletion cost for transfer of water from north of the Delta and water available under the Oakdale Irrigation District agreement. Mizuno indicated she will provide a final allocation to each district shortly. Mizuno informed the Board that the Water Authority has begun efforts to negotiate transfers in 2016. Mizuno met with potential sellers to discuss the process. She noted that the greatest risk for 2016 transfers is whether there will be capacity to move water through the Delta. Mizuno is working on a term sheet and asked sellers to develop transfer proposals. Mizuno expects the Water Authority will have to decide whether to enter into transfer agreements by April 2016.

## **15. Water Policy Administrator Report**

Water Policy Administrator Ara Azhderian indicated much of what is in his report was previously discussed. Azhderian noted the January 19, 2016 State Water Resources Control Board (“State Water Board”) meeting, at which the State Water Board discussed with the United States Bureau of Reclamation and Department of Water Resources the CVP/SWP drought contingency plan. Azhderian concluded by noting that the Water Resources Committee had a detailed presentation on science.

## **16. Executive Director’s Report**

Executive Director Jason Peltier asked Chairman Stearns to summarize a tour he recently took. Chairman Stearns described the tour, which was of Metropolitan Water District water treatment facilities. Peltier also mentioned recent meetings he and others had with Deputy Secretary for the United States Department of the Interior, Commissioner for the United States Bureau of Reclamation and the Regional Director of the Mid-Pacific Region of Reclamation. Peltier closed his report by thanking those who attended the luncheon in honor of Daniel Nelson. Director Birmingham reported that the Deputy Secretary expressed interest in water service contractors’ position concerning the California Water Fix, and that water service contractors in attendance expressed to the Deputy Secretary that fundamental decisions, such as how to further the original project purpose of restoring water supply, need to be made before contractors make additional commitment of resources.

## **17. Drainage Activity**

### **a. Grassland Basin Drainage Activity Report**

Alternate Dennis Falaschi reported that the recent rains and resulting storm runoff have resulted in a lot of water in the drainage system.

### **b. Westside Regional Drainage Plan Report**

Alternate Dennis Falaschi indicated that there was nothing to report.

### **c. San Joaquin Valley Drainage Authority**

Legal Counsel Diane Rathmann indicated that there was nothing to report.

## **18. Closed Session Report**

Chairman Stearns adjourned the open session to address the items listed on the Closed Session Agenda at approximately 10:20 a.m. Upon return to open session at approximately 10:45 a.m., General Counsel Jon Rubin reported that the Board met in closed session to receive advice from counsel on items listed in Agenda Item 18 but took no actions.

## **19. Reports Pursuant to Government Code Section 54954.2**

There were no reports given.

## **20. Adjournment**

The meeting was adjourned at approximately 12:05 p.m.

RESOLUTION NO. 2016-\_\_\_\_

**RESOLUTION AUTHORIZING ASSISTANT EXECUTIVE DIRECTOR TO NEGOTIATE AND EXECUTE 2016 NORTH-OF-DELTA WATER PURCHASE AGREEMENTS WITH WILLING SELLERS; AUTHORIZING NEGOTIATION AND EXECUTION OF 2016 FORBEARANCE AGREEMENTS BETWEEN VARIOUS SACRAMENTO RIVER SETTLEMENT CONTRACTORS, THE UNITED STATES BUREAU OF RECLAMATION AND THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY; MAKING DETERMINATIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AUTHORIZING ACTIONS RELATED THERETO**

WHEREAS, Members of the San Luis & Delta-Mendota Water Authority (the "Water Authority") who have Central Valley Project ("CVP") water service contracts expect the United States Bureau of Reclamation ("Reclamation") to announce an historic, third consecutive "0" percent initial water allocation for irrigation use for the 2016 water year and for M&I use, an allocation of only sufficient water to meet health and safety needs or at least 25% of their historic use, whichever is greater.

WHEREAS, to assist its members, the Water Authority has initiated actions with Reclamation; with the Department of Water Resources ("DWR"); and with certain Sacramento River and Feather River settlement contractors (such contractors being jointly referred to as the "North-of-Delta Sellers") to make water available to members of the Water Authority during water year 2016.

WHEREAS, the Board of Directors of the Water Authority (the "Board") has considered the form of the proposed template one-year 2016 North-of-Delta Water Purchase Agreement, which sets forth the anticipated terms and conditions expected to be entered into with certain Sacramento River settlement contractors, such as Glenn-Colusa Irrigation District and Reclamation District 108 (collectively with any additional agreements with such North-of-Delta Sellers, the "2016 North-of-Delta Water Purchase Agreements"), subject to final agreement on pricing, call date, and any option payment terms, the draft form of said template agreement having been presented to the Board and being on file with the Secretary hereof.

WHEREAS, the Board is apprised that there may be additional Sacramento Valley and Feather River settlement contractors who are willing to enter into one-year 2016 water purchase agreements on substantially the same terms and conditions as the North-of-Delta Sellers named in this Resolution.

WHEREAS, in order to implement the 2016 North-of-Delta Water Purchase Agreements with the Sacramento River settlement contractors, the Water Authority intends to enter into a 2016 Forbearance Agreement by and between each proposed Sacramento River settlement contractor North-of-Delta Seller, Reclamation, and the Water Authority (collectively, the “2016 Forbearance Agreements”), a draft sample form of which has been presented to the Board and is on file with the Secretary hereof.

WHEREAS, pursuant to the National Environmental Policy Act ("NEPA"), Reclamation acting as Federal lead agency, and pursuant to the California Environmental Quality Act ("CEQA"), the Water Authority acting as State lead agency, prepared a joint Environmental Impact Statement/Environmental Impact Report entitled, "Long Term Water Transfers," analyzing the effects on the environment of a range of potential transfers over the 10-year period 2015-2024 (the Long Term Water Transfer EIS-EIR), including those to be implemented through the 2016 North-of-Delta Water Purchase Agreements.

WHEREAS, pursuant to CEQA, on April 9, 2015, the Water Authority certified the Long Term Water Transfers Environmental Impact Report and adopted findings based on its record of proceedings showing that the potentially significant effects on the environment of a range of potential transfers over the 10-year period 2015-2024, including those to be implemented through the 2016 North-of-Delta Water Purchase Agreements, would be avoided or substantially reduced to less-than-significant levels.

WHEREAS, the Board has previously authorized that certain Long Term North to South Water Transfer Program Activity Agreement, establishing the terms under which the benefits and obligations of the 2016 Water Purchase Agreements will be shared by the Activity Agreement Members, which has been executed by the Water Authority and its participating members.

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

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

Section 2. The Board hereby approves the proposed template 2016 North-of-Delta Water Purchase Agreement, and the Assistant Executive Director is hereby authorized to finally negotiate and execute an Agreement tailored for each of the North-of-Delta Sellers willing to make available water during 2016 in substantially the form that has been presented to the Board, subject to such revisions, modifications, additions or deletions as the executing officer may approve prior to execution, including but not limited to final pricing, call date, and any option payment terms. The Assistant Executive Director is further authorized to execute additional 2016 North-of-Delta Water Purchase Agreements with additional sellers identified in the Long-Term Water Transfer EIS-EIR as are willing to make water available through groundwater substitution, crop idling, or both, for delivery by Reclamation and/or DWR.

Section 3. The Assistant Executive Director is hereby authorized and directed to negotiate in consultation with the Water Authority Members participating in the Long Term North to South Water Transfer Program Activity Agreement and to execute on behalf of the Water Authority those certain 2016 Forbearance Agreements 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 executing officer shall approve prior to execution.

Section 4. The authorizations granted to the Assistant Executive Director under Sections 2 and 3 of this Resolution are conditioned upon 1) the effects of the transfer from the respective Sacramento River settlement contractor or Feather River settlement contractor having been analyzed in the Long Term Water Transfer EIS-EIR; and 2) the written consent of at least one Long Term North to South Water Transfer Program Activity Agreement Member to purchase the water made available through the 2016 Water Purchase Agreements on the finally negotiated terms.

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

PASSED, APPROVED AND ADOPTED this 10<sup>th</sup> day of March, 2016, by the following vote:

AYES:  
NAYS:  
ABSTAIN:

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

Attest:

---

Jason Peltier, Secretary

\*\*\*\*\*

I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the San Luis & Delta-Mendota Water Authority, a California joint powers agency, at a special meeting of the Board of Directors thereof duly called and held at the office of the Water Authority on the 10<sup>th</sup> day of March, 2016.

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Jason Peltier, Secretary



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

AGREEMENT AMONG THE UNITED STATES,  
XX IRRIGATION DISTRICT,  
AND  
THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY  
TO PROVIDE FOR ADDITIONAL WATER  
FROM THE CENTRAL VALLEY PROJECT FOR 2016

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, among the BUREAU OF RECLAMATION, hereinafter “Reclamation”, the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, hereinafter “Authority”, and the **XX IRRIGATION DISTRICT**, hereinafter “Contractor”, and is hereby executed pursuant to the following recitals, terms and conditions:

[1<sup>st</sup>] WHEREAS, the Contractor holds an existing Sacramento River Settlement Contract with Reclamation, Contract No. **XXXX**, dated **XX**, hereinafter “Settlement Contract”, that provides for diversions of Base Supply and Project Water, hereinafter collectively referred to as “Contract Total”; and

[2<sup>nd</sup>] WHEREAS, the Authority, by Board Resolution, **dated April 9, 2016**, authorized the Executive Director or Assistant Executive Director to negotiate and execute Water Purchase and Forbearance Agreements for the purchase from Sacramento River Settlement Contractors water made available from groundwater substitution; and

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

[4<sup>th</sup>] WHEREAS, the Contractor and the Authority have executed an Agreement entitled “Water Purchase and Sale Agreement By and Between **XX Irrigation District** and The San Luis & Delta Mendota Water Authority”, hereinafter “Purchase Agreement”, that provides for the Contractor to forbear a portion of its Contract Total for the subsequent benefit of the Participating Authority Members given certain considerations made by the Authority to the Contractor; and

[5<sup>th</sup>] WHEREAS, the Contractor and the Authority have requested Reclamation to accept and account for the foregone quantity of Contractor’s available Contract Total for 2016 as water available to Reclamation for subsequent delivery under its state water right permits for the Central Valley Project, hereinafter “Project”, for delivery as Project Water to Participating Authority Members; and

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

NOW, THEREFORE, the Parties hereto agree as follows:

1. This Agreement shall become effective upon execution by all of the Parties and will remain in effect until December 31, 2016; *Provided*, That any performance obligations pursuant to Articles 9 and 14 of this Agreement shall survive the expiration date of this Agreement and continue until all obligations are completed. The Parties recognize and agree that the forborne portion of the Contractor’s Contract Total for 2016 will be made available for subsequent delivery by Reclamation to Participating Authority Members, consistent with the terms of this Agreement.

2. The Contractor proposes to forbear up to 4,800 acre-feet of its available Contract Total, which the Contractor would have otherwise beneficially used on the lands depicted on Exhibit B of the Settlement Contract. Pending Reclamation’s approval of the forbearance proposal, the Contractor’s anticipated monthly forbearance schedule for 2016 is provided in Exhibit A of this Agreement. Quantities in Exhibit A may be increased or decreased by Reclamation, without further amendment hereof so long as the quantity of water proposed to forbear does not exceed 4,800 acre-feet

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

3. Prior to the delivery of any forborne water by Reclamation to the Participating Authority Members, the Contractor shall provide Reclamation with all necessary documentation to satisfy the requirements of the Draft Technical Information for Preparing Water Transfer Proposals, dated December 2015, hereinafter “Water Transfer White Paper”; the Interim Guidelines for Implementation of Water Transfers, dated February 25, 1993; the Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report, hereinafter “EIS-EIR”; and, the Record of Decision for the Long-Term Water Transfers. Reclamation, in coordination with the State of California’s Department of Water Resources, hereinafter “DWR”, shall evaluate the Contractor’s documentation to ensure it will not result in injury to other legally authorized users of water.

4. The Contractor’s forbearance of a portion of its Contract Total for 2016 is limited to the period April 1 through September 30, 2016. The forborne water shall be scheduled by the Contractor and approved by Reclamation pursuant to Article 2 of this Agreement. If the total diversions by the Contractor plus the forborne water and any other transfers by the Contractor exceed 75 percent of the Contract Total in Exhibit A of the Settlement Contract, then the

quantity of available forborne water available to the Participating Authority Members shall be reduced by Reclamation by that exceeded amount.

5. (a) For cropland idling/shifting actions described in the Water Transfer White Paper, Reclamation will undertake monitoring and verification activities pursuant to the Water Transfer White Paper and the EIS-EIR, including Environmental Commitments in the Monitoring and Mitigation Reporting Plan, to ensure that the forborne water being made available is the result of a reduction in consumptive use. The monitoring plan and any updates shall be submitted to Reclamation by the Contractor and, once approved, attached as Exhibit D to this Agreement, which may be updated without further amendment hereof.

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

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

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

8. Contingent upon regulatory approval, no earlier than November 30, 2016, Reclamation may determine, at its sole discretion and without liability to any other party, that any forborne water that was eligible for replacement with a like amount of Project water, but unable to be pumped due to unfavorable conditions in the Delta or other operational considerations as determined by Reclamation or cannot be stored in Shasta Reservoir, is no longer available to Participating Authority Members and is available to Reclamation for other Project purposes. Reclamation will use its best efforts to avoid making that determination and will only make that determination if it concludes that delivery of the water to Participating Authority Members would unreasonably interfere with Reclamation's operation of the Project for Project purposes or

obligations under law. Project Use Energy will be used for pumping of the forborne water or the like amount of Project Water Reclamation makes available.

9. The total quantity of forborne water initially delivered to the Participating Authority Members will be reduced by approximately 30 percent to account for estimated Delta carriage losses, as determined by Reclamation, in coordination with DWR. The carriage losses percentage will vary based on Delta conditions during the transfer period. The final Delta carriage loss percentage will be established at the conclusion of the transfer period and the quantity of forborne water available for delivery to Participating Authority Members will be trued-up after a final carriage loss percentage is established.

10. The Contractor agrees to reimburse Reclamation for all costs incurred related to the administration and implementation of this Agreement. Reclamation and the Contractor have entered into a separate Letter of Agreement for reimbursement of those costs.

11. (a) The Contractor shall pay to Reclamation the applicable 2016 Rates, Charges and Assessment pursuant to Article 7 of the Settlement Contract for Project Water forborne. The Project Water portion of the water forborne will also be subject to the payment of incremental costs identified in Exhibit E, which may be updated by Reclamation without amendment hereof. Exhibit E presents the costs for delivery of Project Water that are incurred under this Agreement in excess of the costs of providing the Project Water to the Contractor pursuant to the Settlement Contract. If the percentage of Project Water foregone added to the amount of Project Water actually diverted for use on lands within the Contractor's service area exceed 75 percent of the Contract Total under the Settlement Contract, then the Contractor will pay to Reclamation the applicable 2016 Rates, Charges and Assessment for each additional acre-foot of Project Water above the 75 percent threshold.

(b) For Base Supply forborne, accrued, and delivered to Participating Authority Members, the Participating Authority Members shall pay to Reclamation the applicable 2016 Rates pursuant to their respective Project contracts. The Participating Authority Members will be required to revise their water delivery schedules to reflect the amount of forborne water available pursuant to this Agreement and estimated to be delivered on a monthly basis. Payment by the Participating Authority Members for the Base Supply foregone that is accrued, and delivered to the Participating Authority Members shall be based on the payment requirements set forth in their respective Project contracts for Project Water. Reclamation will maintain a detailed accounting of the water available to the Participating Authority Members pursuant to this Agreement.

12. The water made available to the Participating Authority Members pursuant to this Agreement shall be used for irrigation and/or municipal and industrial purposes. All irrigation use will be subject to the acreage limitation provisions of Federal Reclamation Law.

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

14. (a) No later than December 30, 2016, the Contractor in coordination with the Authority and Reclamation shall initiate development of a water transfers summary report by verifying quantities of water made available through method(s) described in this Agreement. A final report shall be due no later than April 30, 2017, and the report shall include, but not limited to, the following:

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

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

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

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

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

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

16. Reclamation shall give 10 days advance written notice to the other parties stating its intention to terminate this Agreement if it determines, within its sole discretion, that performance of this Agreement unreasonably interferes with the ability of Reclamation to meet Project

purposes or obligations under law. Upon such written notice, the Parties shall, as soon as practicable, meet and confer in an attempt to resolve the reason for termination. In exercising this termination, Reclamation is not liable to any Party or to any Participating Authority Members identified in Exhibit B of this Agreement. If this Agreement is terminated, the Contractor and Authority will pay Reclamation any amounts owed as of the date of termination.

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

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

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

ANDERSON-COTTONWOOD IRRIGATION  
DISTRICT

By: \_\_\_\_\_  
President, Board of Directors

SAN LUIS & DELTA MENDOTA WATER  
AUTHORITY

By: \_\_\_\_\_  
Assistant Executive Director

**EXHIBIT A**

Monthly Forbearance Schedule, Acre-Feet  
May 2016 through September 2016

	May	June	July	August	September	Total
Cropland Shifting/Idling						
Groundwater Substitution						
Total						

TABLE 1

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

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

**EXHIBIT B**

**PARTICIPATING AUTHORITY MEMBER CONTRACTORS**

CONTRACTOR	CVP CONTRACT NUMBER



**EXHIBIT C**

List of Approved Groundwater Wells

**Exhibit D**

**Updated Monitoring Plans – Groundwater Substitution**

**EXHIBIT E**

**Incremental Rates Payable to Reclamation**

**WATER PURCHASE AND SALE AGREEMENT**  
**BY AND BETWEEN \_\_\_\_\_ AND**  
**THE SAN LUIS & DELTA MENDOTA WATER AUTHORITY**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between \_\_\_\_\_, hereinafter referred to as “Seller” or “\_\_\_\_\_,” and the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, hereinafter referred to as “Buyer” or “Water Authority.” \_\_\_\_\_ and the Water Authority may be referred to herein individually as a “Party” or jointly as “Parties.”

**RECITALS**

WHEREAS, \_\_\_\_\_ is a \_\_\_\_\_ acting pursuant to Sections 12003 and 12004 of the California Water Code and is empowered to sell and transfer water to Buyer as provided for in this Agreement; and

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

WHEREAS, Buyer’s members are 28 water agencies representing approximately 1,100,000 acres of land within the western San Joaquin Valley, San Benito and Santa Clara Counties that obtain water from the United States Bureau of Reclamation (“Reclamation”) through the federal Central Valley Project (“CVP”) under water service or exchange contracts; and

WHEREAS, because of hydrologic conditions and/or regulatory constraints, member of the Buyer with water service contracts received a 0% allocation of their full contractual supply from Reclamation for the last two years. Water Authority members are expected to receive an initial allocation of 0% of their full contractual supply for irrigation and for M&I uses, the amount required for health and safety or 25%, whichever is greater for the 2016 water year, and current projections show that subsequent increases in allocations, if any, will be made late in the season and at best will be extremely low (e.g. 5% for irrigation); and

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

WHEREAS, Seller is willing to make water available for sale and delivery to the Water Authority by certain forbearance actions, including crop idling/shifting and/or increasing the quantity of groundwater pumped within Seller’s service area, thereby reducing the amount of surface water Seller diverts and uses for irrigation within its service area in 2016; and

WHEREAS, on behalf of Water Authority participating members (the “Transfer Participants”), Buyer intends by this Agreement to obtain a supplemental water supply for the Transfer Participants’ use for irrigation and M&I uses in 2016 to provide water required for

reasonable and beneficial use given the anticipated reduction in deliveries of contract quantities from the CVP; and

WHEREAS, Seller, Buyer and Reclamation will execute a companion forbearance agreement (the "Forbearance Agreement") for 2016 to set forth the terms and conditions under which Reclamation will facilitate Seller making water available to the Water Authority via Seller's forbearance actions in 2016.

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

## **AGREEMENT**

1. **DEFINITIONS:** The following definitions shall govern this Agreement:
  - a. "Agreement-Water" is the surface water transferred and made available to Buyer through this Agreement as a result of Seller's forbearance actions, including crop idling/shifting and/or groundwater substitution, in accordance with California Water Code Sections 380 et seq., 1745, et seq. and 22259.
  - b. "Point of Delivery" means Seller's primary point of diversion of surface water at the Seller's point of diversion on the Sacramento River.
2. **TERM:** This Agreement shall commence on the date set forth above and expire on December 31, 2016, unless terminated sooner by written agreement of the Parties pursuant to the provisions set forth herein; provided, however, that any obligations under this Agreement to be performed after December 31, 2016, shall survive the expiration of the term of this Agreement and shall be fully enforceable.
3. **AGREEMENT TO FORBEAR:** Seller agrees to sell and make available at the Point of Delivery, and the Water Authority agrees to purchase, Agreement-Water during the term of this Agreement for its members' reasonable and beneficial use, in the quantities described and subject to the terms and conditions of this Agreement.
  - a. All Agreement-Water will be used within the boundaries of Buyer's Transfer Participants.
  - b. The Water Authority shall be solely responsible for determining the identities of its members who shall receive an allocation of the water acquired and the quantity allocated to each of them.
4. **QUANTITY AND ADJUSTMENTS TO QUANTITY:**
  - a. **Quantity.** Seller agrees to sell and make available at the Point of Delivery to Buyer up to \_\_\_\_\_ acre-feet of Agreement-Water through crop idling/shifting and/or increasing the

quantity of groundwater pumped, subject to Buyer's call on Agreement-Water pursuant to Paragraphs 6 and 7, and subject to the other terms and conditions of this Agreement.

- b. **Availability.** The quantity of Agreement-Water that Seller makes available for transfer through crop idling/shifting and/or groundwater substitution actions during any month shall be as determined by Reclamation in accordance with the terms and conditions of the Forbearance Agreement. Following Seller's actions to make Agreement-Water available at the Point of Delivery, Reclamation shall determine and confirm the final amount of Agreement-Water made available during such month.
- c. **Groundwater Depletion.** Water pumped by Seller, if any, for use in place of the surface water made available to Buyer pursuant to this Agreement will be subject to an Assumed Depletion Loss of 13% or an alternate amount of depletion losses as agreed upon by the Parties and approved by Reclamation. Seller shall bear the cost of the Assumed Depletion Losses, and payment due to Seller is based on the net quantity of water made available to Buyer after Assumed Depletion Losses are applied. For purposes of this Agreement, "Assumed Depletion Loss" means the total reduction in stream flow assumed by Reclamation to result from additional groundwater pumping that may occur as a result of this Agreement. The Parties acknowledge and agree that, as of the effective date of this Agreement, there are no data or analyses supporting the Assumed Depletion Loss. The Assumed Depletion Loss for this Agreement shall in no manner whatsoever constitute a precedent for any determination or allocation of depletion loss in connection with any future water transfer involving Seller, or in connection with any determinations by any regulatory agency regarding the classification of the water pumped by the Seller. Nothing in this Agreement constitutes an admission by Seller for purposes of future transfers that any regulatory requirements imposed on the transfer under this Agreement are required under applicable law.
- d. **Losses.** Buyer shall bear all other losses, including without limitation Delta carriage water loss and California Aqueduct/Delta-Mendota Canal conveyance losses imposed on Agreement-Water between Seller's Point of Delivery and Buyer's delivery to the Transfer Participants within Buyer's service area.
- e. **Operational/Regulatory Limitations on Buyer's Ability to Export/Litigation Termination.** If Buyer makes a final call for Agreement-Water made available by groundwater substitution, but due to regulatory or operational constraints, Reclamation is unable to store such water at Reclamation's facilities on the Sacramento River or to deliver such water to Buyer through Delta pumping facilities at the time such water is scheduled to be made available by Seller, or if Reclamation terminates the Forbearance Agreement, Buyer shall provide to Seller at least a 72 hour notification to reduce, suspend or terminate groundwater pumping. The Parties shall promptly meet and confer regarding the details and specifics of any such regulatory and operational constraints, and cooperate in good faith to determine when Seller's groundwater pumping may resume making water available to Buyer. If the Parties cannot develop a mutually acceptable plan for the resumption of groundwater pumping and the diversion of all or a portion of the transfer water, Buyer shall still be obligated to pay for all of the water made available

prior to the end of the 72 hour notification period, but not for any groundwater that has at that time not yet been pumped by Seller. Further, if Buyer and Seller mutually agree to terminate this Agreement under Paragraph 15.b or 17.b.i, Buyer may provide the same 72 hour notification and shall be obligated to pay for all of the water made available up to the end of the 72 hour notification period, but not for any groundwater that has not yet been pumped by Seller at the end of the 72 hour period.

5. **PURCHASE PRICE:** Subject to Buyer’s call on Agreement-Water under Paragraphs 6 and 7, Buyer agrees to purchase and pay for Agreement-Water at the Point of Delivery at \$550 per acre-foot. The price per acre-foot will not be lower than the price Buyer pays to any other Seller in the Sacramento Valley pursuant to a 2016 one-year groundwater substitution or crop idling/shifting transfer agreement.

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

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

- a. **Call.** Seller will notify Buyer and Reclamation, in writing, of the quantity of Agreement-Water offered by April 25, 2016. On or before 5:00 p.m. on April 29, 2016 (the “Initial Crop Idling/Shifting Call Date”), Buyer will notify Seller and Reclamation, in writing, of the quantity of Agreement-Water Buyer agrees to purchase. Prior to both Buyer’s notification to Seller and the Initial Crop Idling/Shifting Call Date, Seller may reduce the quantity of Agreement-Water offered to any amount less than the original offer, down to zero acre feet.
- b. **Option to Extend.** If Buyer’s ability to export the Agreement-Water through Delta pumping facilities remains uncertain as of the Initial Crop Idling/Shifting Call Date, Buyer has the option to extend the call date to May 13, 2015 (the “Extended Crop Idling/Shifting Call Date”). Buyer may exercise the option by providing written notice to Seller and by tendering a non-refundable option payment of \$30 per acre-foot for each acre foot of Agreement-Water offered by Seller on April 25, 2016. The non-refundable option payment is in addition to the purchase price of water and is due thirty (30) days after Seller submits an invoice to Buyer. Seller in the event Seller’s water supply determination is not available by the Initial Crop Idling/Shifting Call Date or the Extended Call Date, Seller and Buyer may agree to modify the call dates.
- c. **“Take or Pay” Obligation.** Buyer will have a “take or pay” obligation for the water upon Buyer’s notification to Seller of the quantity of Agreement-Water Buyer wishes to purchase on the Initial Crop Idling/Shifting Call Date or, if the option to exercise has been exercised, on the Extended Crop Idling/Shifting Call Date, and Buyer may not elect to order or pay for less than the amount specified in the notice to Seller except as provided in Paragraph 17.b.i. If Buyer has made the non-refundable option payment to extend the call date but does not elect to purchase water on the Extended Crop

Idling/Shifting Call Date, Seller shall be entitled to keep the entire option payment and Buyer shall have no further obligation to purchase Agreement-Water.

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

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

- a. **Call.** Seller will notify Buyer and Reclamation, in writing, of the quantity of Agreement-Water offered by April 25, 2015. On or before 5:00 p.m. on May 13, 2015 (the “Groundwater Substitution Call Date”), Buyer will notify Seller and Reclamation, in writing, of the quantity of offered Agreement-Water Buyer intends to purchase. Buyer shall provide further notice, on or before 5:00 p.m. on June 1, 2015 (the “Final Groundwater Substitution Call Date”) of the final amount of water Buyer agrees to purchase from Seller.
- b. **Option.** Concurrently with the notice given on the Groundwater Substitution Call Date, Buyer shall tender to Seller an option payment of \$20 per acre-foot for the quantity of Agreement-Water Buyer has specified on the Groundwater Substitution Call Date. All option payments will be applied to the total purchase price of water requested by Buyer on the Final Groundwater Substitution Call Date; however, the option payment shall be non-refundable.
- c. **Adjustment of Call Dates.** The Parties may agree to set an earlier offer date or Groundwater Substitution Call Date upon their confirmation with Reclamation that Agreement-Water may be made available during the April through June period.
- d. **“Take or Pay” Obligation.** Buyer will have a “take or pay” obligation upon Buyer’s notification to Seller of the quantity of Agreement-Water Buyer wishes to purchase on the Final Groundwater Substitution Call Date, and Buyer may not elect to order or pay for less than the amount specified in the notice to Seller, except when and to the extent Buyer has provided 72 hours’ notice under Paragraph 4.e that Buyer is unable to divert the water at Seller’s point of diversion on the Sacramento River or the Parties have mutually agreed to terminate the Agreement under Paragraphs 15.b or 17.b.i. As specified in Paragraph 4.e above, Buyer’s take or pay obligation for water that is not made available following such notice is excused.

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

- a. Seller shall invoice Buyer on a monthly basis following the end of each calendar month for the Agreement-Water made available during such calendar month. Buyer shall pay such invoices within forty-five (45) days of Buyer’s receipt of the invoice and interest shall be paid at the annual interest rate of 10% on any invoices that



remain unpaid forty-five (45) days after receipt of the invoice. Payment shall be made to:

Seller Name  
Address

- b. Buyer will retain ten percent (10%) of invoice amounts pending Reclamation's final confirmation that the quantity of Agreement-Water was made available at the Point of Delivery. Based upon the final confirmation of Agreement-Water made available at Seller's Point of Delivery, Buyer is authorized to calculate the total payments due from Buyer to Seller, to withhold any overpayment, and to remit the balance of the 10% withheld. Interest shall not accrue as to amounts withheld pursuant to this subsection. Buyer shall remit the final ten percent, adjusted as may be provided in this Paragraph, within 30 days following Reclamation's final confirmation of Agreement-Water made available at the Point of Delivery.
  - c. Seller shall provide Buyer with detailed invoices supporting all expenses incurred pursuant to Paragraph 17, and Buyer shall pay such invoices per Paragraph 8.a. Seller shall provide Buyer all invoices for reimbursable expenses pursuant to Paragraph 17 no later than 60 days after the reimbursable expenses have been incurred.
  - d. Failure by Seller to make Agreement-Water available at the Point of Delivery as provided under this Agreement will reduce Buyer's obligation to make payment for Agreement-Water on a per-acre foot basis.
10. **REFUNDS:** In the event Seller fails to provide the amount of Agreement-Water Buyer has purchased in accordance with Paragraphs 6 and 7, subject to Seller's right to terminate for shortages as stated in Paragraph 11, Seller will promptly refund to Buyer any payments made for purchased water not provided at the Point of Delivery by Seller. Any refunds shall include interest at the Local Agency Investment Fund rate for the period the money was held.
11. **WATER QUALITY:** The Seller makes no warranty or representations as to the quality or fitness for use of the Agreement-Water. Buyer, at its own expense, shall be responsible for all necessary measures for the testing, treatment, and other steps required for the intended uses of the Agreement-Water by the Buyer.
12. **SHORTAGE PROVISION/TERMINATION:** If the Seller's surface water supplies are reduced below 75% of its contract quantities or if Seller is unable to forebear the full quantity of Agreement-Water listed in Paragraph 4.a due to unforeseen circumstances or for reasons beyond Seller's control, Seller, at its sole discretion, may terminate this Agreement or for groundwater substitution transfers, may suspend, reduce, or cease groundwater pumping. Prior to termination or, as applicable, as quickly as possible following any action to suspend, reduce or cease groundwater pumping, Seller and Buyer shall confer to determine if, as an alternative to termination, the amount or price of Agreement-Water to be made available by Seller under this Agreement can be adjusted.

13. **WATER SCHEDULING:** Buyer, in coordination with Seller and Reclamation, will develop a schedule for delivery of Agreement-Water called upon by Buyer, made available by Seller at the Point of Delivery in accordance with the Forbearance Agreement, and to assure, to the extent possible, that delivered Agreement-Water can be pumped at the C.W. “Bill” Jones Pumping Plant and/or the Harvey O. Banks Pumping Plant.
14. **DIVERSION COSTS:** All fees, permitting, construction, reconstruction, and maintenance costs for facilities necessary or used to divert Agreement-Water once it is delivered at the Point of Delivery by Seller shall be borne solely by Buyer. Buyer is solely responsible for all costs associated with treatment, diversion head-works, pumping facilities, etc., to divert, convey, transport, treat, and deliver Agreement-Water to the Buyer’s member units.
15. **ENVIRONMENTAL REVIEW:** Reclamation and the Buyer have completed the Long Term Water Transfers EIS/EIR in April, 2015, which considered the environmental effects of the transfers described in this Agreement. Buyer and Seller intend to rely on this environmental document for the purposes of this purchase and sale Agreement Water.
16. **TERMINATION:** In the event of termination of this Agreement or Reclamation’s termination of the Forbearance Agreement, the Parties shall thereafter be under no further obligation or responsibility hereunder, and will release the other party from further obligations under this Agreement, except for their respective shares of costs incurred prior to the effective date of termination, which includes administration expenses under Paragraph 17.a and may include certain litigation costs under paragraph 17.b and Buyer’s take or pay obligation under Paragraphs 6.c and 7.d, unless limited by Paragraph 17.b.i. The Parties to this Agreement shall have the right of termination as set forth in Paragraph 11, and this Paragraph:
- a. If regulatory approval(s) and any additional required CEQA and/or NEPA actions are not satisfied by April 29, 2016, either Party may, by written notice to the other Party, terminate this Agreement unless both Parties agree to extend the date for such approval(s) and/or environmental review.
  - b. If, in the reasonable judgment of either the Seller or Buyer, the costs of any litigation challenging this Agreement, any restrictions, fees, charges or costs imposed in the approvals of any regulatory agency, mitigation measures imposed by any agency pursuant to CEQA or NEPA, or any relief afforded to third parties in any action brought in state or federal court involving this Agreement, are too burdensome in relation to the benefits to be received under this Agreement, then that Party so determining may terminate this Agreement. If Buyer so elects to terminate the Agreement, Buyer shall still be obligated to pay for all of the Agreement-Water made available prior to such termination, for administrative expenses under Paragraph 17.a and litigation expenses under 17.b, and for Buyer’s take or pay obligation under Paragraphs 6.c and 7.d; provided, if Seller terminates in accordance with 17.b.i, Buyer shall not be obligated for Buyer’s take or pay obligation under Paragraph 6.c

and 7.d for all Agreement-Water that has not yet been made available as of the date of such termination.

#### 17. CONDITIONS PRECEDENT/APPROVALS:

- a. Except as provided in Paragraph 17 with respect to reimbursement of costs, the Parties performance under this Agreement is contingent on the Parties obtaining any and all necessary approvals from any third-party agency for delivery of Agreement-Water.
- b. It is a condition precedent to Seller's obligations to make available Agreement-Water, and to Buyer's obligation to pay for Agreement-Water under this Agreement that Reclamation, Seller, and Buyer execute a three-party Forbearance Agreement substantially in the form attached as Exhibit "A," by the terms of which Reclamation accepts Agreement-Water as water available to Reclamation for subsequent appropriation/delivery under its state water rights permits for the CVP and agrees to the terms and conditions for its delivery of such water to Buyer. If such Forbearance Agreement is not executed, or if the required approval of any other third party agency for delivery of Agreement-Water is not provided by May 1, 2015, Buyer shall have no further obligations under this Agreement, except to pay its respective share of administrative costs incurred prior to the effective date of termination per Paragraph 17.a, and for any litigation expenses assigned to Buyer under Paragraph 17.b.
- c. Seller is responsible for obtaining necessary approvals from Reclamation, the Department of Water Resources ("DWR"), and if necessary, the State Water Resources Control Board ("SWRCB"), to transfer the Agreement-Water. Buyer is responsible for obtaining all authorizations from Reclamation and DWR for conveyance of the Agreement-Water to Buyer's place of use.

#### 18. ADMINISTRATIVE AND LITIGATION EXPENSES:

- a. **Administrative Expenses.** Buyer will reimburse Seller's reasonable out-of-pocket expenses, including but not limited to actual legal and engineering consultants' fees and expenses incurred by Seller in preparing, negotiating, administering, implementing, and supporting this Agreement and any pre-Agreement proposal for transfer pursuant to that certain Letter Agreement between the Parties dated \_\_\_\_\_, 2016 (including the costs of defending any litigation challenging this Agreement or its implementation), up to a maximum of \$50,000; provided, however, if Buyer provides to any other Sacramento Valley seller for a 2016 transfer a maximum reimbursement for reasonable out-of-pocket expenses greater than \$50,000, that greater reimbursement maximum will be provided to Seller. Buyer shall not be required to reimburse Seller for time spent by its directors, officers or employees relating to this transfer. Seller shall be entitled to this reimbursement starting May 1, 2016 for costs incurred after February 1, 2016, regardless of whether Agreement-Water is transferred or if the Agreement is terminated under Paragraphs 11 or 15. If Seller fails to provide any Agreement-Water due to its own action or inaction, Seller

will not be entitled to reimbursement and any reimbursements made by the Buyer will be fully refunded by the Seller to the Buyer; provided, if Seller terminates the Agreement because of a reduction in water supply under Paragraph 11, Seller shall be entitled to reimbursement despite the termination. Invoicing of administrative expenses shall be pursuant to the procedures set forth in Paragraph 8.a.

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

- i. Subject to subsections 17.b.ii and 17.b.iii, in the event of litigation or an administrative challenge related to this Agreement, Seller and Buyer will promptly meet and confer to perform a risk assessment of the litigation/challenge, and cooperate in good faith to determine whether to terminate the Agreement due to the litigation/challenge. Either Party may elect to terminate the Agreement due to any such litigation/challenge. If Buyer so elects to terminate the Agreement due to any such litigation/challenge, Buyer shall still be obligated to pay for all of the Agreement-Water made available at the Point of Delivery prior to such termination; for Seller's administrative expenses in accordance with Paragraph 17.a; for any litigation expenses in having the proceeding dismissed or otherwise resolved; and for Buyer's take or pay obligation under Paragraphs 6.c and 7.d. If Seller so elects to terminate the Agreement, Buyer shall still be obligated to pay for all of the Agreement-Water made available at the Point of Delivery prior to such termination; for Seller's administrative expenses in accordance with Paragraph 17.a; and for any litigation expenses in having the proceeding dismissed or otherwise resolved; but Buyer shall not be obligated to pay for the Buyer's take or pay obligation under Paragraphs 6.c and 7.d for all Agreement-Water that has not yet been made available as of the date of such termination. Regardless of whether the agreement is terminated, and except as set forth in subsections 17.b.ii. and 17.b.iii, below, if litigation is pending Buyer shall have primary responsibility for defending against such litigation on behalf of both Buyer and Seller, either as a defendant, respondent, real party in interest or intervenor; and Seller shall participate in defending against such litigation to the extent it deems necessary or appropriate, in Seller's sole discretion. Buyer shall bear its own costs of litigation and shall pay any monetary award, the costs of any remedial actions, and any award of challenger's attorneys' fees associated therewith, whether levied against Buyer or Seller. Buyer shall also reimburse 100% of Seller's actual out-of-pocket expenses Seller incurs for defending this Agreement and against any related litigation under this Paragraph 17.b.i.
- ii. As to claims solely challenging Seller's conduct in Seller's service area, Seller shall have primary responsibility for defending such claims on behalf of both Seller and Buyer, and Buyer shall participate in defending against such claims to the extent it deems necessary or appropriate, in Buyer's sole discretion. Buyer shall bear its own fees and costs of defending against such claims. Except as provided in Paragraph 17.a regarding general cost reimbursement, Seller shall bear its own fees and costs of defending against such claims. Seller shall pay all

monetary awards associated with claims challenging Seller's conduct in Seller's service area.

- iii. To the extent litigation includes multiple claims, the Parties agree to meet and confer in good faith to determine whether or not the action includes claims described under Paragraphs 17.b.i and 17.b.ii. The Parties agree that any claim identified as subject to Paragraph 17.b.ii shall be defended as provided in Paragraph 17.b.ii and the balance of such claims shall be defended as provided in Paragraph 17.b.i.

19. **WATER RIGHTS:** The Agreement-Water transferred under this Agreement is a portion of the surface water available to Seller, and diverted in accordance with Seller's Sacramento River Settlement Contract. Consistent with the provisions of California Water Code Sections 109, 475, 1011, 1244, and 11961, this water transfer performed under this Agreement shall not confer any appropriative, public trust or other right to water on any person or entity. Nothing in this Agreement shall act as forfeiture, diminution or impairment of any rights of Seller to its full diversion of water after the expiration of the Agreement, and this Agreement shall in no way prejudice any of Seller's rights thereto. The Parties agree that the water transferred under this Agreement is considered a beneficial use of water under California law.
20. **BUYER'S PAYMENT OF RECLAMATION'S COSTS, RATES, AND CHARGES:** Buyer shall be responsible for payment of all costs incurred by Reclamation, and imposed upon Seller, for Reclamation's review, approval, implementation and administration of this Agreement and the Forbearance Agreement, as set forth in a separate Letter Agreement between Seller and Reclamation. Seller will be responsible for the payment directly to Reclamation of contract rates for any Agreement-Water made available from Project water under the terms of the Forbearance Agreement and the Letter Agreement. Buyer shall be responsible for any and all incremental costs, rates, charges and assessments that Reclamation imposes upon Seller for conveyance of Project Water to Buyer under the terms of the Forbearance Agreement and the Letter Agreement.
21. **COOPERATION:** To the extent reasonably required, each Party to this Agreement shall, in good faith, assist the other in obtaining all such necessary approvals and preparation of required environmental documents. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.
22. **WAIVER OF RIGHTS:** Any waiver, at any time, by a Party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.
23. **ASSIGNMENT:** This Agreement is entered into in reliance on water supplies available to Seller, the credit of Buyer, and the need of Buyer's Transfer Participants for water, and therefore any assignment of this Agreement in whole or in part without the prior written consent of the other Party hereto is prohibited.

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

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

**SELLER NAME**

**Seller Contact**

**Address**

**Phone Number**

**Fax Number**

**Email Address**

**SAN LUIS & DELTA MENDOTA WATER AUTHORITY**

Frances Mizuno, Assistant Executive Director

San Luis & Delta Mendota Water Authority

15990 Kelso Road

Byron, CA 94514

Phone: (209) 832-6200

Fax: (209) 833-1034

Email: frances.mizuno@sldmwa.org

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

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

26. **ARBITRATION:** In the event of a dispute between the Parties as to any right, alleged right, obligation or alleged obligation under this Agreement, the Parties shall make a good faith effort to resolve the dispute. In the event that a resolution of the dispute cannot be reached despite these efforts, either Party may declare an impasse and its intent to submit the matter to arbitration. Any such arbitration shall be held and conducted before one arbitrator who shall be selected by mutual agreement of the Parties. If agreement is not reached on the selection of an arbitrator within fifteen (15) days after a Party has notified the other Party of

its election to submit to arbitration, then such arbitrator shall be appointed by the presiding judge of the Superior Court of Merced County upon application of either Party hereto. The award or decision of the arbitrator shall be final and judgment may be entered thereon. The provisions of Title 9 of Part 3 of the California Code of Civil Procedure, including §1283.05, and successor statutes, permitting expanded discovery proceedings shall be applicable to all disputes which are arbitrated pursuant to this paragraph.

27. **OTHER AGREEMENTS:** Nothing contained herein restricts the Seller from providing water services and sales to others as authorized by law which do not unreasonably interfere with Seller's obligations hereunder.
28. **ENTIRE AGREEMENT:** This Agreement together with the Letter Agreement between the Parties dated \_\_\_\_\_, 2016 constitutes the entire agreement between the Seller and Buyer and supersedes any oral agreement, statement or promise between them relating to the specific subject matter of this Agreement that is not covered in the Forbearance Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by both Parties to be effective.
29. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.
30. **GENERAL INTERPRETATION:** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any person.
31. **AGREEMENT NOT PRECEDENT:** The Parties acknowledge and agree that nothing in this Agreement shall be considered precedent for any agreements for purchase and sale of water between the Parties in any future year.

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

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

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

Frances Mizuno, Assistant Executive Director

**SELLER:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name, Title