



MEMORANDUM

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

FROM: Pablo Arroyave, Chief Operating Officer

DATE: April 6, 2020

RE: Resolution Including CEQA Exemption for and Authorizing Execution of Agreement to Purchase Release of Water By and Among the Oakdale Irrigation District, South San Joaquin Irrigation District, and San Luis & Delta-Mendota Water Authority, and Department of Water Resources

BACKGROUND

The Water Authority has previously entered into Agreements for release of water by Oakdale and South San Joaquin Irrigation Districts (OID/SSJID) with the last one in 2018. These agreements allow for OID/SSJID to make available water at Goodwin Dam for release by the Bureau of 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). The supplemental CVP Water pumped at Jones was made available to Authority members that agree to pay for the water.

PROPOSED PROJECT

In 2020, there may be an opportunity for OID/SSJID to make available up to 50,000 acre-feet for an April/May Stanislaus River pulse flow release. Under this proposal, the cost to be paid to OID/SSJID for the release water will be \$250/AF. The release is subject to approval by Reclamation and DWR. The water released would be shared by the Water Authority (50%) and DWR (50%). The Water Authority's share of the release would be made available to all 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 to Purchase Release of Water By and Among the Oakdale Irrigation District, South San Joaquin Irrigation District, and San Luis & Delta-Mendota Water Authority, and Department of Water Resources.

RECOMMENDATION

We recommend the Water Resources Committee recommend and the Board of Directors adopt the attached Resolution.

IMPLICATIONS

If the Resolution is not adopted, the Water Authority would miss out on the opportunity to purchase and provide its members low cost supplement water in a year where CVP water allocation is expected to be very low.

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.

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2020-__

**RESOLUTION INCLUDING CEQA EXEMPTION FOR AND AUTHORIZING
EXECUTION OF AGREEMENT TO PURCHASE RELEASE OF WATER BY AND
AMONG OAKDALE IRRIGATION DISTRICT, SOUTH SAN JOAQUIN IRRIGATION
DISTRICT AND SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, AND
DEPARTMENT OF WATER RESOURCES**

WHEREAS, San Luis & Delta-Mendota Water Authority (“Water Authority”) agricultural water service contractor members received an initial allocation of 15% of their full contractual supply for irrigation and 65% for municipal and industrial (“M&I”) for the 2020 water year, and current projections show that subsequent increases in allocations, if any, will be made later in the season and are expected to be minimal.

WHEREAS, the Board of Directors of the Water Authority (the “Board”) has considered a draft of that certain 2020 Agreement to Purchase Release of Water by and Among Oakdale Irrigation District (“OID”) and South San Joaquin Irrigation District (“SSJID”), the California Department of Water Resources (“DWR”) and San Luis & Delta-Mendota Water Authority (“2020 OID-SSJID Agreement”), a copy of which has been presented to the Board and is on file with the Secretary hereof.

WHEREAS, the 2020 OID-SSJID Agreement provides flow in the Stanislaus and lower San Joaquin Rivers that will be in addition to flow that otherwise would occur in the absence of the voluntary sale, which increment of increased flow will be pumped at a 1:1 ratio pursuant to Section 4001(b)(7)(C) of the WIIN Act.

WHEREAS, the releases resulting from the 2020 OID/SSJID Agreement will be managed, in coordination with fishery and wildlife agencies, during the April-May period to optimize benefits for out-migrating salmonid species.

WHEREAS, under current conditions such released water is expected to be available for pumping at the State and Federal Delta export facilities on the basis of 50% available to the CVP and 50% available to the State Water Project (“SWP”), subject to any applicable restrictions or limitations imposed by Federal and State agencies with jurisdiction over CVP or SWP operations but contingent upon such agencies allowing for a 1:1 export ratio during the April-May period.

WHEREAS, Reclamation expects to make the CVP share of water captured at the Delta facilities from the OID-SSJID releases available as supplemental allocation to CVP agricultural and M&I contractors that are members of the Water Authority based upon each such CVP contractor’s election to participate and agreement to accept the terms upon which the supplemental allocation will be made available by Reclamation, including payment of a premium to the Water Authority in the amount of \$250/acre foot for each acre foot released under the 2020 OID-SSJID Agreement.

WHEREAS, execution and implementation of the 2020 OID-SSJID Agreement is in the public interest of the Water Authority because it will help meet CVP obligations under the Water Quality Control Plan, improve the water supply available to its Members and because availability of the Supplemental Allocation 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.

WHEREAS, the Water Authority has determined that its execution and performance of the 2020 OID-SSJID Agreement, including funding the supplemental instream fishery releases and delivering to its Members any supplemental CVP allocation (collectively, the “Project”) resulting from the 2020 OID-SSJID Agreement will have no significant adverse environmental effects.

WHEREAS, the Project is categorically exempt from the California Environmental Quality Act because it will result in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations Section 15301(i) and in the ongoing operation of the existing system within established parameters, without change in operation or expansion of use pursuant to 14 California Code of Regulations, section 15301 (Class 1). 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.

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 Executive Director and the Chief Operating Office are hereby authorized and directed to execute the 2020 OID-SSJID 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 3. The Executive Director, Chief Operating Officer and any Water Authority employees, consultants, or agents directed by the Executive Director or Chief Operating Officer hereby 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 2020 OID-SSJID Agreement as authorized by this Resolution.

PASSED, APPROVED AND ADOPTED this 9th day of April, 2020, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Cannon Michael, Chairman

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

Federico Barajas, Secretary

.....
I hereby certify that the foregoing Resolution No. 2020- was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at the meeting thereof held on the 9th day of April, 2020.

Federico Barajas, Secretary

**AGREEMENT FOR RELEASE OF WATER BY AND AMONG THE
OAKDALE IRRIGATION DISTRICT, THE SOUTH SAN JOAQUIN
IRRIGATION DISTRICT, THE SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY, AND THE CALIFORNIA DEPARTMENT OF WATER
RESOURCES**
SWPAO # _____

This Agreement is entered into this ____ day of _____, 2020, by and among the Oakdale Irrigation District (“OID”), the South San Joaquin Irrigation District (“SSJID”) (collectively, the “Districts”), the San Luis & Delta-Mendota Water Authority (“SLDMWA”), and the Department of Water Resources (“DWR”) of the State of California.

RECITALS

WHEREAS, DWR owns, operates, and maintains water collection, storage, conveyance, and delivery facilities, including but not limited to the State Water Project (“SWP”), and delivers water to 29 water service contractors located throughout California; and

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

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

WHEREAS, SLDMWA is comprised of 28 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 28 member agencies receive water from the federal Central Valley Project (“CVP”) under water service, exchange/settlement, or refuge contracts; and

WHEREAS, Districts are co-owners of certain water rights on the Stanislaus River, including pre-1914 appropriative rights to divert water from the Stanislaus River, and various post-1914 appropriative rights to store water from the Stanislaus River in various reservoirs; and

WHEREAS, DWR’s current forecast for the San Joaquin Valley Water Supply Index is _____ with runoff, precipitation, and snowpack _____; and

WHEREAS, CVP agricultural water service contractors South-of-Delta have received an initial allocation of 15 percent and the State Water Project Contractors (“SWPC”) have received an allocation of 15 percent.

NOW, THEREFORE, the Districts, SLDMWA, and DWR, 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, SLDMWA, and DWR.

(b) “Delivery” means the Districts’ water made available to the United States Bureau of Reclamation (“USBR”) at Goodwin Dam in April and May of 2020. USBR will then 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 USBR from Goodwin Dam the flow necessary to meet terms, conditions, or other regulatory requirements applicable to operations of Central Valley Project facilities on the Stanislaus River.

2. **TERM:** This Agreement shall become effective upon execution by all Parties and shall terminate on December 31, 2020 or upon final payment by SLDMWA and DWR of all costs attributable to this Agreement, whichever occurs later.

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

(a) Upon request by USBR and DWR, the Districts agree to make up to 50,000 acre-feet of water available at Goodwin Dam from April 15 to May 31 of 2020 pursuant to Section 4001(b)(7) of the Water Infrastructure Improvements for the Nation Act, Pub. Law 114-322 (130 Stat. 1852-53). No water shall be released under this Agreement, and DWR and SLDMWA shall not be obligated to pay for any flows released, unless the release of water, as provided under this Agreement, has been requested by USBR, and the contacts for DWR and SLDMWA listed in Paragraph 23 have approved both the release and Delivery.

(b) The water made available for Delivery will be released by USBR in accordance with the requirements set forth in Paragraph 14. The water released will be made available to USBR and DWR and will be shared equally, 50/50, pursuant to a separate operations agreement between DWR and USBR.

(c) If either USBR or DWR cannot pump its share of the released water, then the other may pump the additional water for the benefit of its contractors provided that it is willing to pay for the additional water and provided the Party pumping the additional water has obtained prior written agreement from the other Party that the pumping will not adversely impact the non-pumping Party’s operations.

4. COMPLIANCE WITH APPLICABLE LAWS AND OBTAINING APPROVALS:

(a) The Districts, in making the water available as described in Paragraph 3, shall comply with all applicable laws and regulations, including but not limited to the California Environmental Quality Act (“CEQA”), National Environmental Policy Act (“NEPA”), California Endangered Species Act, and Federal Endangered Species Act. The Districts shall secure any required consent, permits, reports, and orders, and shall provide DWR and USBR with copies prior to Delivery under this Agreement.

(b) The Districts and SLDMWA are entering into this Agreement based on the determination of the Districts and of SLDMWA, as described below, that the Delivery is categorically exempt from CEQA because it will result in the provision of supplemental instream fishery flows pursuant to 14 California Code of Regulations, section 15301 (“CEQA Guidelines § 15301”), subsection (i), and in the ongoing operation of the existing system without change in operation or expansion of use pursuant to CEQA Guidelines § 15301.

(c) The Districts shall be responsible for obtaining any approval from any relevant government entities that the Districts determine in their discretion is necessary for providing the Delivery. The Districts shall email to DWR and USBR any submissions related to this Agreement that the Districts make with any government entity.

(d) SLDMWA has determined the Delivery is categorically exempt from CEQA because it will result in the provision of supplemental instream fishery flows pursuant to CEQA Guidelines § 15301, subsection (i), and in the ongoing operation of the existing system without change in operation or expansion of use pursuant to CEQA Guidelines § 15301.

(e) Upon execution by all Parties of this Agreement, DWR will file a Notice of Exemption based on CEQA Guidelines § 15301 for operation of an existing facility with the State Clearinghouse.

(f) If any of the Parties is required to pay a fine or civil penalty for any of its actions related to this Agreement, then that Party alone shall be responsible for paying the fine or penalty.

5. PURCHASE PRICE: SLDMWA and DWR agree to pay to the Districts two hundred and fifty dollars (\$250) per acre-foot for up to 50,000 acre-feet of water delivered.

6. WATER QUALITY: The Districts make no warranty or representations as to the quality or fitness for use of the Delivery.

7. WATER MEASUREMENT AND DELIVERY: DWR and SLDMWA shall pay the Districts to provide up to 50,000 acre-feet to USBR in Goodwin Dam. The payment shall be based on the actual flows released by USBR from Goodwin Dam in excess of the Base Flow. For the purposes of this Agreement, the flow volume for which Districts will be paid in accordance with Paragraph 5 will be measured as the Goodwin releases exceeding the Base Flow. Through concurrence with the National Marine Fisheries Service (“NMFS”), the timing of the releases may be shifted. A Delivery that is released from Goodwin Dam shall be measured on a daily basis by USBR at the Goodwin Gauge and confirmed by USBR and DWR. The Districts and SLDMWA acknowledge that USBR shall be responsible for determining the flow and schedule of the Delivery and that DWR shall be responsible for verifying the flow and schedule of the Delivery.

8. WATER INFRASTRUCTURE FOR IMPROVEMENTS TO THE NATION ACT (“WIIN ACT”): One purpose of this sale is to assist USBR in meeting the 31-day April through May flow objectives in the 2006 State Water Resources Control Board’s Water Quality Control Plan for the Bay-Delta, as required by section 4001, subsection (b)(7) of the WIIN Act. This sale will result in flow that is in addition to flow that otherwise would occur in the absence of the voluntary sale, under WIIN Act Section 4001, subsection (b)(7)(C). It is the Parties’ expectation that, pursuant to WIIN Act section 4001, subsection (b)(7), the water made available will be subject to an inflow to export ratio of 1:1. (See Paragraph 13).

9. PAYMENT:

(a) The Districts shall invoice SLDMWA and DWR fifty percent (50%) each of the cost for the Delivery for up to a total of 50,000 acre-feet provided at the price identified in Paragraph 5 above, after USBR and DWR have confirmed the amount of water released by USBR from Goodwin Dam in accordance with Paragraph 7.

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

(c) The Districts shall submit: (1) an original of each invoice to the DWR contact listed in Paragraph 22 (Notices), and (2) a copy of each invoice to the DWR Accounting Office, Contracts Payable Unit, P.O. Box 94236, Sacramento, California, 94236-0001. DWR shall pay undisputed invoices within forty-five (45) days of the date such invoices are received by the State Water Project Analysis Office, pursuant to the Prompt Payment Act as specified in Government Code, Chapter 4.5 (commencing with section 927).

10. 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. DWR shall pay the Districts late payment penalties in accordance with the Prompt Payment Act.

11. 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 USBR;
- (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.

12. USBR LIMITING CONDITION: The obligations of Districts to deliver water to USBR at Goodwin Dam under this Agreement, and of SLDMWA and DWR to pay for such Delivery, are at all times subject to the USBR's concurrence with this Agreement and for the use of USBR's facilities as may be necessary for the Districts to make the Delivery. If the Districts do not obtain this approval from USBR, this Agreement shall automatically terminate and SLDMWA and DWR shall only be liable for the quantity of water Districts released pursuant to Paragraph 7 and will have no further obligations under this Agreement.

13. SLDMWA and DWR LIMITING CONDITIONS: The obligations of SLDMWA and DWR to pay for Delivery is subject to DWR and USBR having capacity at Banks Pumping Plant and/or Jones Pumping Plant to pump the additional SWP or CVP water and pursuant to section 4001 of the WIIN Act, which allows for a Vernalis flow-to-combined CVP and SWP pumping ratio of 1:1 (“1:1 Ratio”). If DWR and USBR are unable to pump additional SWP or CVP water made available at Banks Pumping Plant or Jones Pumping Plant, the Parties may attempt to reschedule the Delivery within the April 15 – May 31 period, or in the alternative, any Party may elect to terminate this Agreement by providing notice to the other Parties consistent with Paragraph 22, or the Parties can meet and agree to a new release and diversion rate for the released water. If this Agreement is terminated, SLDMWA and DWR shall only be obligated to pay Districts for the quantity of water Districts released pursuant to Paragraph 7 prior to the Agreement terminating.

14. 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, USBR, DWR, and NMFS. The delivery of the water by the Districts will occur only after USBR, DWR, the Districts, and SLDMWA meet and receive assurances from USBR and DWR that the water to be released will be diverted at the 1:1 Ratio. If the water to be released cannot be diverted at the 1:1 Ratio, then pursuant to Paragraph 13 or 22, 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. The two goals of the Delivery are to assist USBR in the April-May Pulse Flow period, and to have additional SWP and CVP water made available at Banks Pumping Plant and Jones Pumping Plant as a result of the Delivery.

(b) No subsequent changes to the schedule, regulatory conditions, or other intervening matters, 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, or diversions outside the control of Districts which may hereafter be authorized for others from the North, Middle, or South Forks of the Stanislaus River, or any action, legislation, ruling, or determination adverse to the Districts affecting the Agreement and beyond the reasonable control of the Districts, shall release the Parties from their obligations under this Agreement, except as further specified in Paragraph 15.

15. 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 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. Districts shall make good faith efforts to avoid such reductions, but SLDMWA and DWR agree that Districts shall not be liable for reductions of supply in this Agreement due to the above-stated causes. SLDMWA and DWR shall have no obligation to pay for water not delivered because of a reduction caused by factors listed in this Paragraph.

16. APPROVALS AND COSTS: SLDMWA and DWR are solely responsible for any payment for Delivery after the USBR release of Delivery from Goodwin Dam. This Paragraph survives termination or expiration of this Agreement.

17. LITIGATION COSTS: Districts agree to defend their own interests in any litigation or regulatory action challenging the validity of 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.

18. EXPENSES: Districts shall be responsible for all expenses, including but not limited to legal, environmental, or engineering consultants' fees, expenses incurred to obtain any and all necessary approvals and to satisfy all environmental requirements, including CEQA and/or NEPA, required to effectuate the Agreement, and expenses incurred to defend against any litigation challenging the Agreement or the approvals, water rights, or environmental reviews associated with the Agreement. This Paragraph survives termination of this Agreement.

19. 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.

20. 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.

21. 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.

22. TERMINATION: Any party may elect to terminate this Agreement upon notice to the Parties by electronic mail consistent with Paragraph 23. That party providing the termination shall provide the other parties with the specific grounds on which it wishes to terminate the agreement. Termination of this Agreement is effective immediately upon actual electronic mail receipt of notice by the Parties.

23. 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 Districts and SLDMWA and DWR by such officers as they may, from time to 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
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
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
Phone: (209) 826-9696

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Anna Fock, Chief, State Water Project Analysis Office
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001
Email: anna.fock@water.ca.gov
Phone: (916) 653-0190

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, 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.

24. 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.

25. DISPUTE RESOLUTION: In the event of any dispute regarding interpretation or implementation of this Agreement, the Director of DWR and 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.

26. 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.

27. ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between the Districts, SLDMWA, and DWR, 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.

28. 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.

29. SIGNATURE CLAUSE:

(a) The signatories represent that they have appropriate authorization to enter into this Agreement on behalf of the Party for whom they sign.

(b) If required by internal governing rules of OID, SSJID, or SLDMWA, that Party, as appropriate, shall deliver to DWR a copy of its Board of Directors resolution and/or other documentation authorizing that Party to enter into 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 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: _____

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Ted Craddock, Acting Deputy Director, State Water Project

Date: _____

OAKDALE IRRIGATION DISTRICT

By: _____
Steve R. Knell, General Manager

Date: _____

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: _____
Peter Rietkerk, General Manager

Date: _____

DRAFT