



## DEL PUERTO WATER DISTRICT

### *STAFF REPORT/ACTION ITEM REQUEST*

**BOD Meeting Date:** April 21, 2021

**Title:** Enter into Month-to-Month Agreement with 360Payments for the District to accept Credit Card payments.

**Background Information:** Project sought to evaluate various Merchant Services options available to the District at a low cost to the Landowners/Customers wanting to pay invoices with Credit Cards.

**Issues for Consideration/Discussion:** Staff requested pricing from three Merchant Services Vendors for the District to accept credit card payments. We received information from the following vendors:

- Quickbooks
- Elavon – Costco Partner
- 360Payments – Oak Valley Community Bank Partner

After thorough review of the options and pricing, staff considered 360Payments to be the best option for the District, Landowners, and Customers.

**Staff Recommendation:** Staff recommends that the Board authorize the General Manager to enter into a Month-to-Month Agreement with 360Payments and to authorize the transaction charges be invoiced to the Landowner or Customer in the month following the transaction.

**Budget Action Requirement (if applicable):** District would pay a \$30/month fee plus a \$250 one-time fee for Account and Pro Virtual Terminal. The Landowner/Customers would be billed the amount charged to the district by 360Payments in the month following the transaction charges. The estimated transaction charge to the Landowner/Customer would be between (2.20% - 2.35%) based on cost plus 10 cents.

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	SWIPE	Dipped	INVOICE	KEYED	Chip	Online	Monthly Charges	Surcharge to Customer
Quickbooks	2.4% + .25c		2.9% + .25c	3.4% + .25c				3.50%
Costco	2.49% + .07c	2.49% + .07c		3.49% + .17c	1.22% + .12c	1.99% + .25c	\$8 Rental of Terminal or \$199 Purchase	3.50%
360Payments	1.22% + .12c					2.20% - 2.35% based on cost (1.45%) Plus -	Ethernet or WiFi Merchant Fee \$10/mo + Virtual Terminal Fee	2.50%

	Customer Surcharge	District Surcharge	3.50% 1% + .25c	Credit Card Debit Card	Face to Face	100% Customer 100% District	\$8 Rental of Terminal or \$199 Purchase Ethernet or WiFi
Option 1	Customer Surcharge	District Surcharge	3.50%	Credit Card	Face to Face	100% Customer	\$8 Rental of Terminal or \$199 Purchase Ethernet or WiFi
Option 2	District Surcharge	District Surcharge	1.22% + .12c	Credit Card	Face to Face	100% District	\$8 Rental of Terminal or \$199 Purchase Ethernet or WiFi
	District Surcharge	District Surcharge	1.99% + .19c	Rewards CC		100% District	
	District Surcharge	District Surcharge	2.65% + .29c	Corporate CC		100% District	
	District Surcharge	District Surcharge	3.35% + .29c	International CC		100% District	
	District Surcharge	District Surcharge	.87% + .12c	Debit Card		100% District	
	District Surcharge	District Surcharge	1.38% + .19c	Amex less \$400		100% District	
	District Surcharge	District Surcharge	2.8% + .29c	Amex more \$400 less \$3000		100% District	
	District Surcharge	District Surcharge	3.5% + .29c	Amex more \$3000		100% District	
Fraud Prevention cost			\$10 per month				

	District Surcharge	2.20% - 2.35% based on cost (1.45%) Plus - .75% + .10c	V/MC/D/AX	Merchant Fee	Merchant Fee	100% District	Bill Customer	Bill Customer	Merchant Fee	\$10/mo \$20/mo + \$250 one-time set up
Option 1	District Surcharge	2.20% - 2.35% based on cost (1.45%) Plus - .75% + .10c	V/MC/D/AX	Merchant Fee	Merchant Fee	100% District	Bill Customer	Bill Customer	Merchant Fee	\$10/mo \$20/mo + \$250 one-time set up

Del Puerto Water District

Evaluation Sheet Merchant Services Vendors

	Customer Service Scale	Pricing Scale	Simplicity Scale	Total Score
Quickbooks	3	4	3	10
Elavon - Costco Partner	4	4	4	12
360Payments - Oak Valley Community Bank Partner	5	5	5	15





for liability against Consultant for use of non-final Work Product. If a reviewing agency requires that check prints be submitted with a stamp or seal, those shall not be considered final for purposes of this paragraph.

6. In the event Client (1) makes, agrees to, authorizes, or permits changes in Work Product, or (2) makes, agrees to, authorizes, or permits construction of such unauthorized changes, which changes are not consented to in writing by Consultant, or (3) does not follow recommendations prepared by Consultant pursuant to this agreement, resulting in unauthorized changes to the project, Client acknowledges that the unauthorized changes and their effects are not the responsibility of Consultant. Client agrees to release Consultant from all liability arising from such unauthorized changes, and further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants from and against all claims, demands, damages or costs, including attorneys' fees, arising from such changes.
7. Under no circumstances shall delivery of Work Product for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's unauthorized use or reuse of the Work Product.
8. The Client is aware that differences may exist between electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Consultant and electronic files, the signed sealed hard-copy documents shall govern.

#### **LIMITATIONS**

9. Consultant makes no representations concerning soils or geological conditions unless specifically included in writing in this agreement, or by amendments to this agreement. If Consultant recommends that Client retain the services of a Geotechnical Engineer and Client chooses to not do so, Consultant shall not be responsible for any liability that may arise out of the making of or failure to make soils or geological surveys, subsurface soils or geological tests, or general soils or geological testing.
10. Client acknowledges that, unless specifically stated to the contrary in the proposal's description of services to be provided, Consultant's scope of services for this project does not include any services related in any way to asbestos and/or hazardous or toxic materials. Should Consultant or any other party encounter such materials on the job site, or should it in any other way become known that such materials are present or may be present on the job site or any adjacent or nearby areas which may affect Consultant's services, Consultant may, at its option, suspend or terminate work on the project until such time as Client retains a qualified contractor to abate and/or remove the asbestos and/or hazardous or toxic materials and warrant that the job site is free from any hazard which may result from the existence of such materials.

#### **INDEMNIFICATION**

11. To the fullest extent allowed by law, Consultant will indemnify and hold harmless, but shall have no duty to defend Client, its officers, directors, employees, and agents (collectively, the "Client Indemnitees") from, for and against any and all claims, demands, damages, losses, expenses, liabilities, and penalties arising out of or relating to the Project, but only to the extent caused by the negligent or other wrongful acts or omissions of Consultant, its subconsultants, or any person or entity for whose acts or omissions any of them are responsible, or by the failure of any such party to perform as required by this Agreement. To the fullest extent allowed by law, Client will indemnify and hold harmless, but shall have no duty to defend Consultant and its officers, directors, employees and agents from, for and against any and all claims, demands, damages, losses, expenses, liabilities and penalties arising out of or relating to the Project, but only to the extent caused by the negligent or other wrongful acts or omissions of Client or any person or entity for whose acts or omissions it is responsible, or by the failure of any such party to perform as required by this Agreement. The obligations and rights of this Section are in addition to other obligations and rights of indemnity provided under this Agreement or applicable law.

#### **FINANCIAL**

12. All fees and other charges due Consultant will be billed monthly and shall be due at the time of billing unless specified otherwise in this agreement. If Client fails to pay Consultant within sixty (60) days after invoices are rendered, Consultant shall have the right in its sole discretion to consider such default in payment a material breach of this entire agreement, and, upon written notice, Consultant's duties, obligations and responsibilities under this agreement may be suspended or terminated for cause pursuant to Sections 26 through 31. In such event, Client shall promptly pay Consultant for all

- outstanding fees and charges due Consultant at the time of suspension or termination including all costs and expenses incurred in the performance of services up to suspension or termination.
13. Consultant shall not be liable to Client for any costs or damages that may result from the termination or suspension of services under this agreement due to Client's failure to pay Consultant invoices in accordance with the terms of this paragraph. In the event that Consultant agrees to resume terminated or suspended services after receiving full payment of all late invoices, Client agrees that time schedules and fees, as applicable, related to the services will be equitably adjusted to reflect any delays or additional costs caused by the termination or suspension of services.
  14. In all cases where the proposal calls for payment of a retainer, that payment shall be made by Client to Consultant prior to commencement of services under this agreement. Upon receipt of retainer payment, the Consultant shall commence services as provided for under this Agreement. Unless otherwise provided for in the project proposal, such retainer shall be held by Consultant throughout the duration of the contract, and shall be applied to the final project invoice, and to any other outstanding AR, including late payment charges, on the project. Any amount of said retainer in excess of the final invoice and other outstanding AR shall be returned to the Client within 30 days of issuance of the final project invoice.
  15. Client agrees that all billings from Consultant to Client will be considered correct and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event of a dispute over any billing or portion of billing, Client agrees to pay the undisputed portion of any billings in accordance with the payment terms set forth in Section 18.
  16. Client agrees to pay a monthly late payment charge, which will be the lesser of one and one half percent (1-1/2%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing thirty (30) days after the date of the billing. Client acknowledges that payments applied first to unpaid late payment charges and then to unpaid balances of invoices.
  17. In the event Consultant's fee schedule changes due to any increase of costs such as the granting of wage increases and/or other employee benefits to field or office employees or any taxes or fees imposed by local, state, or federal government on consultants' fees during the lifetime of this agreement, the new fee schedule shall apply to all subsequent work on time-and-materials contracts.
  18. If payment for Consultant's services is to be made on behalf of Client by a third party lender, Client agrees that Consultant shall not be required to indemnify the third party lender, in the form of an endorsement or otherwise, as a condition to receiving payment for services. Client agrees to reimburse Consultant for all collection agency fees, legal fees, court costs, reasonable consultant staff costs and other expenses paid or incurred by Consultant in the event that collection efforts become necessary to enforce payment of any unpaid billings due to Consultant in connection with the services provided in this agreement.

#### LIMITATION OF LIABILITY

19. **Notwithstanding any other provisions of this Agreement to the contrary, the aggregate liability of the Consultant under this Agreement, whether for breach of contract, tort, strict liability or any other legal theory, will not exceed the total amount of Consultant's compensation for performing services under this Agreement or \$50,000, whichever is greater, however this limitation of Consultant's liability does not apply to third-party claims, or to the Client's reasonable attorneys' fees and expert witnesses' fees and litigation expenses arising out of or related to such third-party claims for which Consultant is liable.**

#### DISPUTE RESOLUTION

20. In an effort to resolve any conflicts or disputes that arise regarding performance under this agreement by either party, Client and Consultant agree that all such disputes shall be submitted to nonbinding mediation, using a mutually agreed upon mediation services experienced in the resolution of construction disputes. Unless the parties mutually agree otherwise, such mediation shall be a pre-condition to the initiation of any litigation. The parties further agree to include a similar mediation provision in their agreements with other independent contractors and consultants retained for the project and require them to similarly agree to these dispute resolution procedures. This provision shall not be interpreted to restrict the right of either party to file an action in a court of law, in the County of Fresno, State of California, having appropriate jurisdiction or to preclude or limit the Consultant's right to record, perfect or to enforce any applicable lien or Stop Notice rights.

## CONSTRUCTION PROJECTS

21. If the scope of services contained in this agreement does not include construction phase services for this project, Client agrees that such construction phase services will be provided by Client or by others. Client assumes all responsibility for interpretation of the contract documents and for construction observation and supervision and waives any claim against Consultant that may in any way be connected thereto. In addition, Client agrees to indemnify and hold Consultant harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from the modification, clarification, interpretation, adjustments or changes made to the contract documents to reflect changed field or other conditions, except for claims arising from the negligence or other wrongful acts of Consultant, its employees, its subconsultants, or any other person or entity for which Consultant is responsible.
22. Client agrees to include provisions in its contract with the construction contractor to the effect that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or its employees or subconsultants at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.
23. Client agrees to require its contractor and subcontractors to review the plans, specifications and documents prepared by Consultant prior to the commencement of construction phase work. If the contractor and/or subcontractors believe there are deficiencies, conflicts, errors, omissions, code violations, or other deficiencies in the plans, specifications and documents prepared by Consultant, contractors shall notify Client so those deficiencies may be corrected or otherwise addressed by Consultant prior to the commencement of construction phase work.
24. If, during the construction phase of the project, Client discovers or becomes aware of changed field or other conditions which necessitate clarifications, modifications or other changes to the plans, specifications, estimates or other documents prepared by Consultant, Client agrees to notify Consultant and, at Client's option, retain Consultant to prepare the necessary changes or modifications before construction activities proceed. Further, Client agrees to require a provision in its construction contracts for the project which requires the contractor to promptly notify Client of any changed field or other conditions so that Client may in turn notify Consultant pursuant to the provisions of this paragraph.
25. If, due to the Consultant's error, omission or negligence, a required item or component of the Project is omitted from the Consultant's construction documents, the Consultant shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. The Consultant will not be responsible for any cost or expense that enhances the value of the Project.

## SUSPENSION AND TERMINATION

26. If the Project or the Consultant's services are suspended by the Client for more than thirty (30) consecutive calendar days, the Consultant shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the Client shall compensate the Consultant for expenses incurred as a result of the suspension and resumption of its services, and the Consultant's schedule and fees for the remainder of the Project shall be equitably adjusted.
27. If the Consultant's services are suspended for more than ninety (90) days, consecutive or in the aggregate, the Consultant may terminate this Agreement upon giving not less than five (5) calendar days' written notice to the Client.
28. If the Client is in breach of the payment terms or otherwise is in material breach of this Agreement, the Consultant may suspend performance of services upon five (5) calendar days' notice to the Client. The Consultant shall have no liability to the Client, and the Client agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the Client. Upon receipt of payment in full of all outstanding sums due from the Client, or curing of such other breach that caused the Consultant to suspend services, the Consultant shall resume services, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

29. Client acknowledges Consultant has the right to complete all services included in this agreement. In the event this agreement is terminated before the completion of all services, unless Consultant is responsible for such early termination, Client agrees to release Consultant from all liability for services not performed or completed by Consultant and from liability for any third-party reliance, use, interpretation or extrapolation of Consultant's work product. In the event all or any portion of the services by Consultant are suspended, abandoned, or otherwise terminated, Client shall pay Consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein, if any. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by Client as extra services pursuant to Section 26. Client acknowledges if project services are terminated for the convenience of Client, Consultant is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to Section 28.
30. The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Consultant not less than seven (7) calendar days' written notice.
31. In the event of termination of this Agreement by either party, Consultant shall invoice Client for all outstanding services and expenses reasonably incurred by the Consultant in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination. The Client shall within thirty (30) calendar days of termination pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement.

#### **OTHER**

32. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and Consultant.
33. This agreement shall not be assigned by either Client or Consultant without the prior written consent of the other.
34. Consultant's or Client's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant. Consultant's or Client's waiver of any breach of this agreement shall not constitute the waiver of any other breach of the Agreement.
35. Client and Consultant agree that if any term or provision of this Agreement is determined to be illegal, in conflict with any law, void or otherwise unenforceable, and if the essential terms and provisions of this Agreement remain unaffected, then the validity of the remaining terms and provisions will not be affected and the offending provision will be given the fullest meaning and effect allowed by law.
36. This agreement shall be governed by and construed in accordance with the laws of the State of California.
37. Within the limits of the approved scope and fee, Consultant may engage the services of any subconsultants when, in the Consultant's sole opinion, it is appropriate to do so. Such subconsultants may include testing laboratories, geotechnical engineers and other specialized consulting services deemed necessary by the Consultant to carry out the scope of the Consultant's services.
38. Consultant shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this agreement if Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against Client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with final order or judgment issued by the Bankruptcy Court.
39. This agreement shall not be construed to alter, affect or waive any design professional's lien, mechanic's lien or stop notice right, which Consultant may have for the performance of services pursuant to this agreement. Client agrees to provide to Consultant the current name and address of the record owner of the property upon which the project is to be located. Client also agrees to provide Consultant with the name and address of any and all lenders who may loan money on the project and who are entitled to receive a preliminary notice.
40. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. Client agrees that it is the



- responsibility of Client to maintain in good standing all governmental approvals or permits and to timely apply for any necessary extensions thereof.
41. Consultant and Client each agree to waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with paragraphs 26 through 31, except for termination expenses provided for in said paragraph 31. Client further agrees that to the fullest extent permitted by law, Consultant shall not be liable to Client for any special, indirect or consequential damages whatsoever, whether caused by Consultant's negligence, errors, omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever, including but not limited to, loss of use of equipment or facility, and loss of profits or revenue.
  42. This Agreement is the entire Agreement between the Client and the Consultant. It supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by both the Client and the Consultant.

Client	<u>Del Puerto Water District</u>	Provost & Pritchard Engineering Group, Inc., dba Provost & Pritchard Consulting Group
By	<u><i>Arthur C Hansen</i></u> By	<u><i>Kevin R Johansen</i></u>
Name/Title	<u>General Manager</u>	Name/Title Kevin R. Johansen RCE 47444 Principal Engineer
Date Signed	<u>4/1/21</u>	Date Signed <u>March 31, 2021</u>

9



2505 Alluvial Avenue  
Clovis, CA 93611-9166  
Tel: (559) 326-1100  
Fax: 559) 326-1090  
[www.ppeng.com](http://www.ppeng.com)

**Task Order 21-01**  
**Scope of Work**  
**Del Puerto Water District**  
**NEPA Documents for Warren Act Contract**  
**March 31, 2021**

This Task Order describes the requested Work and is an attachment to the on-going Consultant Services Agreement between Provost & Pritchard Engineering Group, Inc., dba Provost & Pritchard Consulting Group (Provost & Pritchard), and the Del Puerto Water District (Del Puerto) dated March 31, 2021. All terms and conditions of referenced Consultant Services Agreement apply.

**SCOPE OF WORK**

The scope of work for this Task Order consists of preparing a draft Environmental Assessment (EA) for the United States Bureau of Reclamation (Reclamation) to comply with the National Environmental Policy Act (NEPA). The EA would analyze the effects of obtaining a Warren Act Contract (WAC) to utilize Reclamation facilities to deliver non-Project water from Mapes Ranch to Del Puerto. Without presupposing the findings of the EA, it is anticipated that the analysis will result in a Finding of No Significant Impact (FONSI) and approval of the WAC.

The scope of work assumes that Del Puerto will file a Notice of Exemption to comply with the California Environmental Quality Act (CEQA).

**SCHEDULE**

Based on P&P's authorization to proceed in April 2021, it is anticipated that after meeting with Reclamation, preparation of the draft EA will commence immediately. Administrative drafts of the EA will be provided to Del Puerto within three weeks of receiving this signed task order, and the final draft to Reclamation following Del Puerto review.

**FEE**

Del Puerto will be billed monthly on a time and materials basis according to P&P's current fee schedule. The fee for this Task Order 21-01 shall not exceed \$10,000.00 without written authorization from Del Puerto.

**ADDITIONAL SERVICES**

During the course of the work, there may be additional services that P&P may be asked to provide. If so, a description of the work would be prepared and changes in fees or

10

limitations on fees would be mutually agreed upon prior to commencing the additional services.

**TERMS AND CONDITIONS**

If this proposal is acceptable, please sign the Consultant Services Agreement and this task order and return a copy of both to our office. These documents will serve as our Notice to Proceed.

Client: Del Puerto Water District

Provost & Pritchard Engineering Group, Inc.  
dba Provost & Pritchard Consulting Group

By: Anthea C. Hansen

By: Kevin R. Johansen

Name/Title: General Manager

Name/Title: Kevin R Johansen, RCE 47444  
Principal Engineer

Date Signed: 3/4/21

Date Signed: March 31, 2021

11



VI. C.

TO-440  
2.2.4.22

Letter of Agreement  
Contract No. 21-WC-20-5817

Board of Directors  
Del Puerto Water District  
P.O. Box 1596  
Patterson, California 95363

Subject: Letter of Agreement Contract No. 21-WC-20-5817 for Payment of Administrative Cost Incurred for Preparation of Temporary Storage and/or Conveyance Contract Actions for Del Puerto Water District (District) – Central Valley Project (Project)

Dear Board Members:

This **Letter of Agreement (LOA) No. 21-WC-20-5817** between the Bureau of Reclamation (Reclamation) and Del Puerto Water District (District) provides for reimbursement of Reclamation costs related to the preparation and execution of the conveyance of Non-Project Water (Groundwater from Mapes Ranch) in Project facilities under Contract No. 21-WC-20-5818 entitled, *“Temporary Contract Between the United States and Del Puerto Water District Providing for Storage and Conveyance of Non-Project Water.”*

Appropriate Reclamation staff from various Interior Region 10 division offices and area offices shall participate in meetings, consultation and coordination as necessary to environmentally analyze, research, and prepare the appropriate contractual documents pursuant to this Agreement. Reclamation’s team may consist of, but is not limited to, staff from the following disciplines: Contracts, Environmental, Lands, Water Rights, and Operations. The District shall be responsible for financing all actual costs incurred pursuant to this Agreement and understands that while executing this Agreement, it does not imply approval of any of the proposed actions requested.

Based upon the foregoing, the PARTIES HEREBY AGREE:

1. **DISTRICT PAYMENT OBLIGATION:** The District shall be responsible for advancing to Reclamation the estimated costs and ultimately paying in full, the actual costs incurred preparing and administering the subject activities. Reclamation’s Region 10 Finance Office will provide the District with reports of the costs incurred upon request.

2. **DEPOSIT AND MINIMUM BALANCE:** The District will deposit with Reclamation an advance in the amount of **Seven Thousand Dollars (\$7,000)** which will be used to finance the total costs incurred to pursue the activities described above. The District agrees to maintain a balance in the account of Two Thousand Dollars (\$2,000) to cover anticipated costs. Whenever the account balance is less than \$2,000, an additional deposit of \$5,000 will be required and the District shall pay such additional deposit to Reclamation within ten (10) working days of notification by Reclamation.

3. **REFUND:** Any unexpended funds advanced by the District pursuant to this Agreement remaining on deposit with Reclamation at the termination of this Agreement will be refunded.

4. TERM: This Agreement is effective April 8, 2021 and shall continue in effect until April 8, 2026 unless terminated by either party by such party providing the other party with a thirty (30) days advance written notice. The District shall be responsible for all expenses incurred prior to the termination of this Agreement.

Please sign the enclosed LOA documents and return one signed original, along with the deposit of Seven thousand dollars (\$7,000.00) to the following address:

Bureau of Reclamation  
SCCAO-Tracy Office  
Attention: M. Cathy James (TO-442)  
16650 Kelso Road  
Byron, California 94514

The \$7,000.00 deposit is to be made payable to the Bureau of Reclamation. Please reference LOA Contract No. 21-WC-20-5817 on your remittance which will ensure the funds are applied to the appropriate account.

If you have any questions please me at 209-836-6279 or by electronic mail at [mjames@usbr.gov](mailto:mjames@usbr.gov).

Sincerely,

Mary C. James  
Repayment Specialist

In Duplicate

*On behalf of Del Puerto Water District, I concur with the foregoing:*

\_\_\_\_\_  
Authorizing Official's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorizing Official's Name (Print)

\_\_\_\_\_  
Authorizing Official's Title (Print)

(3)

**A RESOLUTION OF THE BOARD OF DIRECTORS  
AUTHORIZING THE EXECUTION OF A TEMPORARY CONTRACT  
WITH THE UNITED STATES BUREAU OF RECLAMATION  
TO PROVIDE FOR STORAGE AND CONVEYANCE OF NON-PROJECT WATER**

**WHEREAS**, the Board of Directors of Del Puerto Water District (the "Board" and the "District", respectively) has requested a Temporary Contract To Provide For Storage And Conveyance Of Non-Project Water in Project Facilities ("Warren Act Contract") from the Bureau of Reclamation; and

**WHEREAS**, Reclamation has presented the District with Draft Contract No.XX-XX-XX-XXXX; and

**WHEREAS**, said Warren Act Contract will support the storage and conveyance of a Non-Project supply and District requests conveyance of said Non-Project Water through Excess Capacity in the Delta-Mendota Canal; and

**WHEREAS**, the Board has reviewed and considered said Contract between Reclamation and the District which, upon execution and receipt, will be kept on file with the Secretary hereof.

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED** as follows:

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

**Section 2.** The General Manager and Secretary, or their respective designees, are hereby authorized to execute the Contract in substantially the form previously presented to the Board, subject to such revisions, additions and deletions as such executing officers may approve prior to execution, said execution to provide conclusive evidence of such approval.

**Section 3.** The General Manager, or his designee, is hereby authorized and directed to execute any and all additional agreements and/or other documents, and to take such additional actions as may be necessary or convenient to carry out the intent of this Resolution.

**Adopted at a meeting of the Board of Directors, at Patterson, California, this 21st day of April 2021.**

M

**AYES:**

**NOES:**

**ABSENT:**

---

Ivan E. Bays, President  
**DEL PUERTO WATER DISTRICT**

Attest:

---

Anthea G. Hansen, Secretary

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**I HEREBY CERTIFY** that the foregoing is the resolution of said District as duly passed and adopted by the Del Puerto Water District, a public agency formed under the laws of the State of California, at a meeting of the Board of Directors thereof duly called and held at the office of the District on the 21st day of February 2021.

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Secretary of the Board of Directors

15

Temporary Warren Act Contract – Year Choose a year  
Choose a use  
Contract No. Insert contract number

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Insert Division/Unit, Central Valley Project, California

TEMPORARY CONTRACT BETWEEN THE UNITED STATES  
AND  
Insert name of Contractor  
PROVIDING FOR CONVEYANCE OF NON-PROJECT WATER

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	
	Explanatory Recitals	
1	Definitions.....	2
2	Term of Contract.....	5
3	Introduction, Conveyance, and Delivery of Non-Project Water.....	6
4	Measurement of Non-Project Water.....	9
5	Operation and Maintenance by Operating Non-Federal Entity.....	10
6	Payments and Adjustments.....	12
7	Medium for Transmitting Payments.....	13
8	Excess Capacity.....	14
9	Acreage Limitation Provisions.....	15
10	Receipt and Distribution of Non-Project Water – Sale, Transfer, or Exchange of Non-Project Water.....	15
11	Water Conservation.....	16
12	United States Not Liable.....	16
13	Opinions and Determinations.....	17
14	Protection of Water and Air Quality.....	18
15	Charges for Delinquent Payments.....	19
16	Equal Employment Opportunity.....	20
17	Certification of Non-Segregated Facilities.....	21
18	Compliance with Civil Rights Laws and Obligations.....	22
19	General Obligation – Benefits Conditioned Upon Payment.....	22
20	Books, Records, and Reports.....	23
21	Contingent upon Appropriations or Allotment of Funds.....	23
22	Assignment Limited – Successors and Assigns Obligated.....	23

Commented [A1]: Update page numbers as necessary.

16

Temporary Warren Act Contract – Year Choose a year  
Choose a use  
Contract No. Insert contract number

Table of Contents – continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
23	Officials Not to Benefit.....	23
24	Changes in Contractor’s Organization.....	23
25	Notices .....	24
26	Incorporation of Exhibits .....	24
27	Contract Drafting Considerations .....	24
	Signature Page	
	Exhibit A – Contractor’s Boundary Map	
	Exhibit B – Conveyance Rates	
	Exhibit C – Source(s) of Contractor’s Non-Project Water	
	Exhibit D – Water Quality Standards	
	Exhibit E – Approved Laboratory List	

17

Temporary Warren Act Contract – Year Choose a year  
Choose a use  
Contract No. Insert contract number

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Insert Division/Unit, Central Valley Project, California

TEMPORARY CONTRACT BETWEEN THE UNITED STATES

AND

Insert name of Contractor

PROVIDING FOR CONVEYANCE OF NON-PROJECT WATER

1 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
2 pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or  
3 supplementary thereto, including the Act of February 21, 1911 (36 Stat. 925), and Section 305 of  
4 the Reclamation States Emergency Drought Relief Act of 1991, enacted March 5, 1992  
5 (106 Stat. 59), all collectively hereinafter referred to as the Federal Reclamation laws, between  
6 the UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented  
7 by the officer executing this Contract, hereinafter referred to as the Contracting Officer, and  
8 Insert name of Contractor, hereinafter referred to as the Contractor;

9 WITNESSETH, That:

10 EXPLANATORY RECITALS

11 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central  
12 Valley Project, California, for diversion, storage, carriage, distribution and beneficial use, for  
13 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection  
14 and restoration, generation and distribution of electric energy, salinity control, navigation and  
15 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,  
16 and the San Joaquin River and their tributaries; and

18

Contract No. Insert Contract number here

17 [2<sup>nd</sup>] WHEREAS, the Contractor asserts a right to a Non-Project Water supply  
18 for Insert purpose of use purposes through its interest in Identify source of right, quantity, and  
19 season of diversion for surface water and has requested the United States convey said Non-  
20 Project Water through Excess Capacity in the Insert name of canal and associated facilities,  
21 features of the Insert Division/Unit, Central Valley Project; and

**Commented [A2]:** This explanatory recital will require modification if the source of the Non-Project Water is groundwater.

22 [3<sup>rd</sup>] WHEREAS, the United States is willing to convey said Non-Project  
23 Water to the Contractor through Excess Capacity in said Project Facilities in accordance with the  
24 terms and conditions hereinafter stated; and

25 [4<sup>th</sup>] WHEREAS, the environmental compliance requirements for the execution  
26 of this Contract have been met by Insert date and document number or title of the appropriate  
27 environmental document.

28 NOW, THEREFORE, in consideration of the covenants herein contained, the  
29 parties agree as follows:

30 DEFINITIONS

31 1. When used herein unless otherwise distinctly expressed, or manifestly  
32 incompatible with the intent of the parties as expressed in this Contract, the term:

33 (a) "Calendar Year" shall mean the period January 1 through December 31,  
34 both dates inclusive;

35 (b) "Contracting Officer" shall mean the Secretary of the Interior's duly  
36 authorized representative acting pursuant to this Contract or applicable Reclamation law or  
37 regulation;

19



Contract No. Insert Contract number here

38 (c) "Contractor's Boundaries" shall mean the geographic area within which  
39 the Contractor is authorized to serve Non-Project Water as set forth on Exhibit A, which may be  
40 modified in accordance with Article 24, without amendment of this Contract;

41 (d) "Eligible Lands" shall mean all lands to which Irrigation Water may be  
42 delivered in accordance with Section 204 of the RRA;

Commented [A3]: Omit from M&I only contract

43 (e) "Excess Capacity" shall mean capacity in the Project Facilities in excess  
44 of that needed to meet the Project's authorized purposes, as determined solely by the Contracting  
45 Officer, which may be made available to convey and deliver Non-Project Water;

46 (f) "Full-Cost Lands" shall mean landholdings described in Sections  
47 205(a)(3) and 202(3) of the RRA;

Commented [A4]: Omit from M&I only contract

48 (g) "Incremental Fee" shall mean the fee, as set forth in Exhibit B, to be paid  
49 to the United States pursuant to the acreage limitation provisions of the Federal Reclamation  
50 laws for Non-Project Water conveyed through Project Facilities that will be used to irrigate  
51 Ineligible Lands;

Commented [A5]: Omit from M&I only contract

52 (h) "Ineligible Lands" shall mean all lands to which Irrigation Water may not  
53 be delivered in accordance with Section 204 of the RRA;

Commented [A6]: Omit from M&I only contract

54 (i) "Irrigation Water" shall mean Non-Project Water used to irrigate land  
55 primarily for the production of commercial agricultural crops or livestock, and domestic and  
56 other uses that are incidental thereto. It does not include uses such as watering golf courses;  
57 lawns and ornamental shrubbery used in residential and commercial landscaping, household  
58 gardens, parks and other recreational facilities; pasture for animals raised for personal purposes  
59 or for nonagricultural commercial purposes; cemeteries; and similar uses (except to the extent  
60 that some of these uses may be incidental to uses that are primarily agricultural). It also does not

Commented [A7]: Omit from M&I only contract

Contract No. Insert Contract number here

61 include commercial agricultural uses that do not require irrigation, such as fish farms and  
62 livestock production in confined feeding or brooding operations;

63 (j) "Municipal and Industrial (M&I) Water" shall mean Non-Project Water  
64 used for municipal, industrial, and miscellaneous purposes not falling under the definition of  
65 "Irrigation Water" described in subdivision (i) of this Article 1 or within another category of  
66 water use under an applicable Federal authority;

Commented [A8]: Omit from irrigation only contract

67 (k) "Non-Project Water" shall mean water acquired by or available to the  
68 Contractor from the source(s) identified in Exhibit C that has not been appropriated or acquired  
69 by the United States;

70 (l) "Operating Non-Federal Entity" shall mean the non-Federal entity that has  
71 the obligation pursuant to a separate agreement with the United States to operate and maintain all  
72 or a portion of the Project Facilities, and which may have funding obligations with respect  
73 thereto;

Commented [A9]: Omit if no ONFE

74 (m) "Project" shall mean the Central Valley Project, owned by the United  
75 States and managed by the Department of the Interior, Bureau of Reclamation;

76 (n) "Project Facilities" shall mean the Insert name of canal, river, and/or  
77 reservoir and associated facilities, constructed as features of the Insert Division/Unit, Central  
78 Valley Project;

79 (o) "Project-Use Power" is that electrical energy, and its associated ancillary  
80 service components, required to provide the full electrical service needed to operate and maintain  
81 Project Facilities, and to provide electric service for Project purposes and loads in conformance  
82 with the Reclamation Project authorization. Project-Use Power is not available to pump

Contract No. Insert Contract number here

83 Non-Project Water, to operate pumps that were not built as Federal facilities as part of the  
84 Project, to pump Project Water outside the authorized service area, or provide for on-farm uses;

85 (p) "Project Water" shall mean all water that is developed, diverted, stored, or  
86 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
87 accordance with the terms and conditions of water rights acquired pursuant to California law;

88 (q) "Rates" shall mean the amount to be paid to the United States by the  
89 Contractor, as set forth in Exhibit B, for the use of Excess Capacity in the Project Facilities made  
90 available pursuant to this Contract;

91 (r) "RRA" shall mean the Reclamation Reform Act of October 12, 1982  
92 (96 Stat. 1263), as amended;

93 (s) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
94 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
95 through any agency of the Department of the Interior; and

96 (t) "Year" shall mean the period from and including March 1 of the Calendar  
97 Year through the last day of February of the following Calendar Year.

98 TERM OF CONTRACT

99 ~~2.~~ This Contract shall become effective on the date hereinabove written and shall  
100 remain in effect through February Insert correct day, Insert correct year: Provided, That upon  
101 written notice to the Contractor, this Contract may be terminated by the Contracting Officer at an  
102 earlier date, if the Contracting Officer determines that the Contractor has not been complying  
103 with one or more terms or conditions of this Contract.

**Commented [A10]:** The term of the Contract cannot exceed that of the Contractor's right to the source(s) of the Non-Project Water identified on Exhibit C. For example, if the Contractor has entered into an agreement for a supply of Non-Project Water that is effective through June 1, 2018, Article 2 should not provide for the Warren Act contract to be effective through February 28, 2019

Contract No. Insert Contract number here

104 INTRODUCTION, CONVEYANCE, AND DELIVERY OF NON-PROJECT WATER

105 3. (a) During the term of this Contract, the Contractor may introduce up to Insert  
106 quantity acre-feet each Year of Non-Project Water from the source(s) identified in Exhibit C into  
107 the Project Facilities at Identify authorized point(s) of introduction on canal, river, and/or  
108 reservoir. The United States or the designated Operating Non-Federal Entity shall convey Non-  
109 Project Water through Excess Capacity in the Project Facilities from said point(s) of introduction  
110 for delivery to the Contractor at Identify authorized point(s) of introduction on canal, river,  
111 and/or reservoir or other location(s) mutually agreed to in writing by the Contracting Officer and  
112 the Contractor, in accordance with an approved schedule submitted by the Contractor pursuant to  
113 subdivision (d) of this Article: Provided, That the quantity of Non-Project Water to be delivered  
114 to the Contractor from Project Facilities shall not exceed the quantity of Non-Project Water  
115 previously introduced into the Project Facilities by the Contractor at said point(s) of introduction,  
116 less Insert percent amount.% percent for conveyance losses.

117 (a.1) In the event the quantity of water delivered to the Contractor exceeds the  
118 quantity of Non-Project water authorized pursuant to subdivision (a) of this Article, the  
119 Contractor shall immediately take all reasonable actions to make available a like amount of  
120 water, plus conveyance loss, into the Project Facilities for use by the United States for Project  
121 purposes. The provisions of this subdivision are not exclusive and shall not prohibit the United  
122 States from exercising any other remedy under existing law, including the early termination of  
123 this Contract pursuant to Article 2 of this Contract.

124 (b) Exhibit C may be modified or replaced by mutual agreement of the  
125 Contractor and the Contracting Officer to reflect changes to the source(s) of Non-Project water  
126 without amendment of this Contract: Provided, however, That no such modification or

**Commented [A11]:** Modify, as appropriate, to conform to authorized season of diversion or other limitation.

**Commented [A12]:** The contract quantity cannot exceed the Contractor's Non-Project Water supply nor the authorized season of diversion. Please note, the Contractor's Non-Project Water supply and the authorized season of diversion, must be verified and approved by Regional Water Rights Branch MP-440.

**Commented [A13]:** Omit highlighted text if no ONFE.

**Commented [A14]:** Article 3(a)(1) is to be used for non CVP contractors. Omit this article for CVP contractors as an over deliverance of Non-Project water is taken care of for CVP contractors in article 6(b).

23

Contract No. Insert Contract number here

127 replacement shall be approved by the Contracting Officer absent the completion of all  
128 appropriate environmental documentation, including but not limited to documents prepared  
129 pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Endangered Species  
130 Act of 1973 (ESA), as amended.

131 (c) All Non-Project Water conveyed and delivered to the Contractor pursuant  
132 to this Contract shall be used for Insert purpose of use.

133 (d) Prior to the introduction of Non-Project Water into the Project Facilities,  
134 the Contractor shall submit a schedule to the Contracting Officer and the designated Operating  
135 Non-Federal Entity showing the quantities of Non-Project Water to be introduced into the  
136 Project Facilities, and the desired time or times for delivery of said Non-Project Water:

Commented [A15]: Omit highlighted text if no ONFE

137 Provided, That the Contractor is not required to initially schedule delivery of the maximum  
138 quantity of Non-Project Water for which the Contractor desires conveyance during the term of  
139 this Contract. The initial schedule and any revision(s) thereof shall be in a form acceptable to the  
140 Contracting Officer and shall be submitted at such times and in such manner as determined by  
141 the Contracting Officer. The Contractor shall not introduce Non-Project Water into the Project  
142 Facilities unless and until the schedule and any revision(s) thereof have been approved by the  
143 Contracting Officer.

144 (e) All Non-Project Water remaining in the Project Facilities after 30 days  
145 from the date of introduction or upon expiration or termination of this Contract shall be deemed  
146 to be unused water donated to the United States for Project purposes. Further, all Non-Project  
147 Water made available for delivery to the Contractor from the Project Facilities and not accepted  
148 by the Contractor shall be deemed to be unused water donated to the United States for Project  
149 purposes.

Contract No. Insert Contract number here

150 (f) Unless otherwise agreed to in writing by the Contracting Officer, the Non-  
151 Project Water shall be introduced into and delivered to the Contractor through existing Project  
152 Facilities. If temporary inflow or delivery facilities are required to effectuate the introduction of  
153 Non-Project Water into the Project Facilities or the delivery of the Non-Project Water to the  
154 Contractor from the Project Facilities, the Contractor shall, at its own cost and expense obtain all  
155 appropriate environmental documents, necessary rights-of-way for such facilities, including the  
156 appropriate right of-use agreement(s) or other authorizations issued by the United States for any  
157 such facilities located on right-of-way for existing Project Facilities. The Contractor, at its own  
158 cost and expense, shall be responsible for providing, installing, operating, maintaining, repairing,  
159 replacing, and removing said inflow and delivery facilities. The Contractor hereby grants to the  
160 Contracting Officer and the Operating Non-Federal Entity access, for the purpose of this  
161 Contract, to all temporary inflow and delivery facilities installed by the Contractor.

**Commented [A16]:** Subdivision (f) should be modified, as appropriate, to identify the specific facilities to be used to effectuate the introduction and delivery of the Non-Project Water from the Project Facilities, and the associated responsibilities of the Contractor, Contracting Officer, and the ONFE, if applicable. The issuance of the Warren Act contract and any right-of-use agreement or other requisite authorization required for the temporary inflow and discharge facilities installed by the Contractor needs to be coordinated to ensure that the effective dates are consistent and to avoid conflicting terms and conditions in the respective documents. If available, the title, contract number, and date of the right-of-use agreement or other authorization should be specifically referenced.

162 (g) The introduction, conveyance, and delivery of Non-Project Water pursuant  
163 to this Contract will not be supported with Project-Use Power. If electrical power is required to  
164 convey or pump the Non-Project Water into, through or from the Project Facilities, the  
165 Contractor shall: (i) be responsible for the acquisition and payment of all electrical power and  
166 associated transmission service charges, and provide a copy of a power contract and copies of  
167 payment documents to the Contracting Officer as evidence that such electrical power has been  
168 contracted and paid for prior to the introduction, conveyance, and delivery of any Non-Project  
169 Water; and/or (ii) prior to the introduction, conveyance, and delivery of any Non-Project Water,  
170 enter into a letter of agreement with the United States that provides for the payment of all actual  
171 energy costs and fees incurred in the introduction, conveyance and delivery of the Non-Project  
172 Water.

**Commented [A17]:** Omit highlighted text if no ONFE

Contract No. Insert Contract number here

173 (h) The Contractor shall have no rights to any benefits from incidental power  
174 generation that may result from the conveyance of the Non-Project Water through Excess  
175 Capacity in the Project Facilities authorized pursuant to this Contract.

176 (i) The introduction of Non-Project Water into the Project Facilities by the  
177 Contractor shall be conditioned upon compliance by the Contractor with the environmental  
178 measures described in the environmental documentation prepared in connection with the  
179 execution of this Contract and with the terms of the applicable operations procedures approved  
180 by the Contracting Officer.

181 MEASUREMENT OF NON-PROJECT WATER

182 4. (a) All Non-Project Water shall be measured and recorded at the point(s) of  
183 introduction and point(s) of delivery established pursuant to Article 3 herein with measurement  
184 devices acceptable to the Contracting Officer and the methods used to make such measurements  
185 shall be in accordance with sound engineering practices.

186 (b) Unless otherwise agreed to in writing by the Contracting Officer, the  
187 Contractor, at its own cost and expense, shall be responsible for providing, installing, operating,  
188 maintaining, repairing, replacing, and removing all measurement devices required under this  
189 Contract in accordance with any right-of-use agreement(s) or other requisite authorization(s)  
190 issued by the United States. The Contractor shall be responsible for all costs associated with the  
191 issuance of such right-of-use agreement(s) and authorization(s).

**Commented [A18]:** Subdivision (b) should be modified, as appropriate, if the Non-Project Water can be measured with existing measurement devices on the Project Facilities and the Contractor will not have responsibility for the measurement devices. The issuance of a Warren Act contract and any right-of-use agreement or other requisite authorization required for measurement devices required to effectuate the Warren Act contract needs to be coordinated to ensure that the effective dates are consistent and to avoid conflicting terms and conditions in the respective documents. If the title, Contract No., date, etc. of the right-of-use agreement or other authorization is known, this information should be specifically referenced.

192 (c) The Contractor shall maintain accurate records of the quantity of Non-  
193 Project Water, expressed in acre-feet, introduced into and delivered from Project Facilities at  
194 said authorized point(s) of introduction and delivery and shall provide such records to the

Contract No. Insert Contract number here

195 Contracting Officer and the Operating Non-Federal Entity at such times and in such manner as  
196 determined by the Contracting Officer.

Commented [A19]: Omit highlighted text if no ONFE

197 (d) Upon the request of either party to this Contract, the Contracting Officer  
198 shall investigate, or cause to be investigated by the Operating Non-Federal Entity, the accuracy

Commented [A20]: Omit highlighted text if no ONFE

199 of all measurements of Non-Project Water required by this Contract. If the investigation  
200 discloses errors in the recorded measurements, such errors shall be promptly corrected. If the  
201 investigation discloses that measurement devices are defective or inoperative, the Contracting  
202 Officer shall take any necessary actions to ensure that the responsible party makes the  
203 appropriate adjustments, repairs, or replacements to the measurement devices. In the event the  
204 Contractor, as the responsible party, neglects or fails to make such adjustments, repairs, or  
205 replacements to the measurement devices within a reasonable time and to the reasonable  
206 satisfaction of the Contracting Officer, the Contracting Officer may cause such adjustments,  
207 repairs, or replacements to be made and the costs thereof shall be charged to the Contractor and  
208 the Contractor shall pay said charges to the United States immediately upon receipt of a detailed  
209 billing. For any period of time during which accurate measurements of the Non-Project Water  
210 have not been made, the Contracting Officer shall consult with the Contractor and the Operating  
211 Non-Federal Entity prior to making a determination of the quantity of Non-Project Water  
212 introduced, conveyed and delivered for that period of time and such determination by the  
213 Contracting Officer shall be final and binding on the Contractor.

Commented [A21]: Omit highlighted text if no ONFE

214 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

Commented [A22]: Omit Article 5 in its entirety if O&M has not been transferred to ONFE.

215 5. (a) The operation and maintenance (O&M) of a portion of the Project  
216 Facilities to be used to introduce, convey and deliver the Non-Project Water to the Contractor,  
217 and responsibility for funding a portion of the costs of such O&M, have been transferred from

27



Contract No. Insert Contract number here

218 the United States to the Insert name of ONFE, the designated Operating Non-Federal Entity,  
219 pursuant to a separate agreement, identified as Contract No. Insert contract number, dated Insert  
220 date. That separate agreement shall not interfere with or affect the rights or obligations of the  
221 Contractor or the United States hereunder.

Commented [A23]: If applicable, insert "as amended" or "as amended and assigned"

222 The Contractor may pay directly to the Insert name of ONFE, or to any successor  
223 approved by the Contracting Officer under the terms and conditions of the separate agreement  
224 described in subdivision (a) of this Article 5, all rates, charges, or assessments of any kind,  
225 including any assessment for reserve funds, that the Insert name of ONFE or such successor  
226 determines, sets, or establishes for the operation and maintenance of the portion of the Project  
227 Facilities operated and maintained by the Insert name of ONFE or such successor used to convey  
228 and deliver the Non-Project Water to the Contractor.

229 (c) For so long as the O&M of any portion of the Project Facilities used to  
230 convey and deliver the Non-Project Water to the Contractor is performed by the Insert name of  
231 ONFE, or any successor thereto, the Contracting Officer shall adjust those components of the  
232 Rates for the Non-Project Water conveyed under this Contract by deleting the costs associated  
233 with the activity being performed by the Insert name of ONFE or its successor.

234 (d) In the event the United States reassumes O&M of any portion of the  
235 Project Facilities from the Operating Non-Federal Entity, the Contracting Officer shall so notify  
236 the Contractor, in writing, and shall revise the Rates on Exhibit B to include the costs associated  
237 with the O&M activities reassumed by the United States. The Contractor shall, thereafter, in the  
238 absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
239 specified in the revised Exhibit B directly to the United States in compliance with Article 6 of  
240 this Contract.

Contract No. Insert Contract number here

PAYMENTS AND ADJUSTMENTS

241

242

6. (a) At the time the Contractor submits a schedule, or any revision(s) thereof

243

pursuant to subdivision (d) of Article 3 of this Contract, the Contractor shall make an advance

244

payment to the United States equal to the total amount payable pursuant to the applicable Rates

245

shown on Exhibit B for each acre-foot of Non-Project Water to be introduced into the Project

246

Facilities. Non-Project Water shall not be introduced into Project Facilities by the Contractor

247

prior to such payment being received by the United States.

248

(b) In the event the quantity of water delivered to the Contractor

249

exceeds the quantity of Non-Project Water authorized pursuant to subdivision (a) of Article 3 of

250

this Contract, that additional amount of water shall be deemed Project water delivered to the

251

Contractor, and an equivalent quantity of water shall be deducted from the Contractor's Project

252

water supply available thereafter under that certain "Long-Term Renewal Contract Between the

253

United States and Insert name of contractor Providing for Project Water Service," designated

254

Contract No. Insert contract number, dated Insert date, and payment shall be made at the

255

applicable rate identified on Exhibit Insert exhibit designation to said contract. The provisions of

256

this subdivision are not exclusive and shall not prohibit the United States from exercising any

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other remedy, including the early termination of this Contract pursuant to Article 2 of this

258

Contract.

259

(c) The amount of any overpayment by the Contractor by reason of the

260

quantity of Non-Project Water introduced into the Project Facilities and conveyed pursuant to

261

this Contract, as conclusively determined by the Contracting Officer, having been less than the

262

quantity which the Contractor otherwise under the provisions of this Contract would have been

263

required to pay for, shall be applied first to any accrued indebtedness arising out of this Contract

**Commented [A24]:** Subdivision (b) of Article 6 is to be included if the Contractor has a long-term or interim renewal contract. For Friant Division contractors with Class 1 and Class 2 water supplies, the additional water is to be deducted from the next available Class 1 supply, with any remaining amount to be deducted from available Class 2 water supply. Subdivision (c) should be modified accordingly to reflect this requirement for the Friant Division contractors.

For non CVP contractors, Article 6(b) can be omitted because over delivery of water to non CVP contractors is taken care of in Article 3(a.1)

**Commented [A25]:** Modify title if Contractor has not entered into a LTRC.

29

Contract No. Insert Contract number here

264 then due and owing to the United States by the Contractor. Any amount of such overpayment  
265 then remaining shall be refunded to the Contractor: Provided, however, That no refund shall be  
266 made by the United States to the Contractor for any quantity of Non-Project Water deemed to be  
267 unused water donated to the United States for Project purposes pursuant to subdivision (e) of  
268 Article 3 of this Contract.

269 (d) All payments made by the Contractor pursuant to subdivision (a) of this  
270 Article 6 shall be covered into the Reclamation Fund pursuant to Section 3 of the Act of  
271 February 21, 1911 (36 Stat. 925).

272 (e) The payment of the Rates set forth in this Article 6 for the use of Excess  
273 Capacity are exclusive of O&M costs to be paid directly to the Operating Non-Federal Entity by  
274 the Contractor, and any additional charges that the Contractor may assess its water users. In  
275 accordance with the Act of February 21, 1911 (36 Stat. 925), the Contractor may not impose on  
276 its water users any charge for the use of Excess Capacity that exceeds the total amount paid to  
277 the United States and to the Operating Non-Federal Entity. Provided, That the Contractor may  
278 also charge its water users such additional amounts as are necessary to cover the Contractor's  
279 reasonable administrative costs in contracting with the United States for the use of Excess  
280 Capacity in the Project Facilities.

Commented [A26]: Omit highlighted text is no ONFE

Commented [A27]: Omit highlighted text is no ONFE

281 MEDIUM FOR TRANSMITTING PAYMENTS

282 7. (a) All payments from the Contractor to the United States under this Contract  
283 shall be by the medium requested by the United States on or before the date payment is due. The  
284 required method of payment may include checks, wire transfers, or other types of payment  
285 specified by the United States.

Contract No. Insert Contract number here

286 (b) Upon execution of the Contract, the Contractor shall furnish the  
287 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
288 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
289 out of the Contractor's relationship with the United States.

290 EXCESS CAPACITY

291 8. (a) The availability of Excess Capacity shall be determined solely by the  
292 Contracting Officer. Nothing contained in this Contract shall limit or preclude the United States  
293 from utilizing available capacity in the Project Facilities for the storage and conveyance of  
294 Project Water pursuant to Federal law, Reclamation law or policy, and existing contract(s); or for  
295 using Excess Capacity in the Project Facilities for the storage and conveyance of any other  
296 supplies of Non-Project Water.

297 (b) The Contracting Officer and the Operating Non-Federal Entity shall not be  
298 obligated to convey Non-Project Water during periods of maintenance or for other operating  
299 requirements.

**Commented [A28]:** If the Project Facilities are routinely taken out of service for an extended period of time, such as for dewatering, this provision should be modified to include specific reference to the period of unavailability.

**Commented [A29]:** Omit highlighted text is no ONFE.

300 (c) If at any time the Contracting Officer determines that there will not be  
301 Excess Capacity in the Project Facilities sufficient to allow the Non-Project Water to be  
302 introduced into, conveyed, and delivered in accordance with an approved schedule submitted by  
303 the Contractor, the Contracting Officer shall so notify the Contractor in writing. Within 24 hours  
304 of said notice, the Contractor shall revise its schedule accordingly.

305 (d) No provision of this Contract shall be construed in any way as a basis for  
306 the Contractor to establish a priority to or a permanent right to the use of Excess Capacity in the  
307 Project Facilities nor to set a precedent to obligate the United States to enter into contracts with  
308 any other entities or individuals for the conveyance or storage of Non-Project Water.

3

Contract No. Insert Contract number here

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ACREAGE LIMITATION PROVISIONS

Commented [A30]: Omit Article 9 in its entirety from M&I Only contracts.

9. (a) The Non-Project Water introduced, conveyed, and delivered pursuant to this Contract cannot be furnished to irrigate more than 160 acres of Eligible Lands owned directly or indirectly by any one person unless that person has become subject to the discretionary provisions of the RRA. The Rates for furnishing water to irrigate such Eligible Lands are identified as Irrigation Cost of Service, RRA Full Cost 202(3), and RRA Full Cost 205(a)(3) on Exhibit B.

(b) The Non-Project Water conveyed pursuant to this Contract can be furnished to Ineligible Lands only if the Contractor pays the Incremental Fee specified on Exhibit B.

RECEIPT AND DISTRIBUTION OF NON-PROJECT WATER SALE, TRANSFER, OR EXCHANGE OF NON-PROJECT WATER

10. (a) The parties hereto acknowledge that this Contract does not grant any permission or entitlement to the Contractor to extract and/or divert Non-Project Water from the source(s) described on Exhibit C or to change the nature or place of use of its rights to said Non-Project Water in any way. It is the responsibility of the Contractor to comply with all applicable Federal, State, and local laws, rules and regulations, including, but not limited to, State water law in relation to the Non-Project Water. It is expressly understood by the parties that the United States is only providing conveyance capacity for the Non-Project Water and does not claim any interest in the acquisition or use of the Non-Project Water beyond the terms specifically set forth in this Contract.

(b) The Contracting Officer makes no representations as to the accuracy of the description or of the validity of the Contractor's rights to the Non-Project Water described in Exhibit C.

(c) No sale, transfer, or exchange of Non-Project Water conveyed under this Contract may take place without the prior written approval of the Contracting Officer.

32

Contract No. Insert Contract number here

335

WATER CONSERVATION

336

11. (a) Prior to the delivery of water provided from or conveyed through federally

337

constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop

338

a water conservation plan consistent with the plans required by subsection 210(b) of the

339

Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and

340

Regulations).

**Commented [A31]:** If paragraph (b) is omitted, delete yellow highlight on text (a).

341

(b) The parties hereto acknowledge and agree that pursuant to Contract No.

**Commented [A32]:** Include subdivision (b) only if the Contractor has implemented a current Reclamation-approved water conservation program/plan under an existing water service contract.

342

Insert contract number, "Insert title of contract", dated Insert date the Contractor has

343

implemented an effective water conservation plan/program that has been approved by the

**Commented [A33]:** Modify highlighted text, as appropriate, to conform to requirement in the water service contract

344

Contracting Officer. Said water conservation plan/program shall be deemed to meet the

**Commented [A34]:** Modify highlighted text, as appropriate, to conform to requirement in the water service contract

345

requirements of subdivision (a) of this Article 11: Provided, That the Contractor, prior to

346

execution of this Contract, documents to the satisfaction of the Contracting Officer that the

347

quantity of Non-Project Water to be conveyed pursuant to this Contract has been included in its

348

approved water conservation plan/program and that all Non-Project Water conveyed pursuant to

**Commented [A35]:** Modify highlighted text, as appropriate, to conform to requirement in the water service contract

349

this Contract shall be subject to the same water conservation requirements as the Project Water

350

under Contract No. Insert contract number.

351

UNITED STATES NOT LIABLE

352

12. (a) The United States, its officers, agents and employees, including the

353

Operating Non-Federal Entity, shall not be responsible for the control, care, or distribution of the

**Commented [A36]:** Omit highlighted text is no ONFE.

354

Non-Project Water before it is introduced into or after it is delivered from the Project Facilities.

355

It is specifically understood by the parties hereto that the United States is only providing

356

conveyance capacity for the Non-Project Water and does not claim any interest in the Non-

357

Project Water beyond the terms specifically set forth in this Contract.

33

Contract No. Insert Contract number here

358 (b) The Contractor shall indemnify and hold harmless the United States, its  
359 officers, agents and employees, and the Operating Non-Federal Entity, from any loss or damage  
360 and from any liability on account of personal injury, death, or property damage, or claims for  
361 personal injury, death, or property damage, of any nature whatsoever arising out of any actions  
362 or omissions of the Contractor, its directors, officers, agents, contractors, and employees, under  
363 this Contract, including the manner or method in which the Non-Project Water identified on  
364 Exhibit C is introduced into and delivered from the Project Facilities. The Contractor further  
365 releases the United States, its officers, agents and employees, and the Operating Non-Federal  
366 Entity, from every claim for injury to persons, death, or property damage, direct or indirect,  
367 resulting from the Contracting Officer's determination of the quantity of Excess Capacity  
368 available in the Project Facilities for conveyance of the Contractor's Non-Project Water, the  
369 determination that the Non-Project Water introduced into Project Facilities must be terminated,  
370 and the elimination from Exhibit C of any source(s) of Non-Project Water. Nothing contained in  
371 this Article shall be construed as an assumption of liability by the Contractor with respect to such  
372 matters.

Commented [A37]: Omit highlighted text is no ONFE.

Commented [A38]: Omit highlighted text is no ONFE.

373 RULES, REGULATIONS, OPINIONS AND DETERMINATIONS

374 13. (a) The parties agree that the delivery of water or the use of Federal facilities  
375 pursuant to this contract is subject to Federal reclamation law, as amended and supplemented,  
376 and the rules and regulations promulgated by the Secretary of the Interior under Federal  
377 reclamation law.

378 (b) The Contracting Officer shall have the right to make determinations  
379 necessary to administer this Contract that are consistent with the provisions of this Contract, the  
380 laws of the United States and the State of California, and the rules and regulations promulgated  
381 by the Secretary. Such determinations shall be made in consultation with the Contractor to the  
382 extent reasonably practicable.  
383

384 (c) Where the terms of this Contract provide for actions to be based upon the  
385 opinion or determination of either party to this Contract, said terms shall not be construed as  
386

Contract No. Insert Contract number here

387 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
388 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
389 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
390 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
391 provided in a timely manner. Nothing in subdivision (c) of this Article 13 is intended to or shall  
392 affect or alter the standard of judicial review applicable under Federal law to any opinion or  
393 determination implementing a specific provision of Federal law embodied in statute or  
394 regulation.

395 PROTECTION OF WATER AND AIR QUALITY

396 14. (a) Project Facilities used to make available and deliver Non-Project Water to  
397 the Contractor shall be operated and maintained in the most practical manner to maintain the  
398 quality of the Non-Project Water at the highest level possible as determined by the Contracting  
399 Officer; Provided, That the United States does not warrant the quality of the Non-Project Water  
400 delivered to the Contractor and is under no obligation to furnish or construct water treatment  
401 facilities to maintain or improve the quality of the Non-Project Water delivered to the  
402 Contractor.

403 (b) The Contractor shall comply with all applicable water and air pollution  
404 laws and regulations of the United States and the State of California; and shall obtain all required  
405 permits or licenses from the appropriate Federal, State, or local authorities necessary for the  
406 delivery of Non-Project Water by the Contractor; and shall be responsible for compliance with  
407 all Federal, State, and local water quality standards applicable to surface and subsurface drainage  
408 and/or discharges generated through the use of Project Facilities or Contractor facilities or Non-  
409 Project Water provided by the Contractor within the Contractor's Boundaries.

410 (c) This Article 14 shall not affect or alter any legal obligations of the  
411 Secretary to provide drainage or other discharge services.

412 (d) The Non-Project Water introduced into the Project Facilities shall be of  
413 such quality, as determined solely by the Contracting Officer, as to not significantly degrade the  
414 quality of the Project Water. If it is determined by the Contracting Officer that the quality of the  
415 Non-Project Water from any source(s) identified in Exhibit C will significantly degrade the  
416 quality of Project Water in or introduced into the Project Facilities, the Contractor shall, upon  
417 receipt of a written notice from the Contracting Officer, arrange for the immediate termination of

BS



Contract No. Insert Contract number here

418 the introduction of Non-Project Water from such sources(s) into the Project Facilities, and  
419 Exhibit C shall be modified to delete such sources(s) of Non-Project Water.

420 (e) Exhibit D identifies the minimum water quality standards for monitoring  
421 the quality of Non-Project Water introduced by the Contractor into Project Facilities. Exhibit E  
422 identifies the laboratories approved by the Contracting Officer that are to be used for conducting  
423 water quality analyses. The Contractor is responsible for sampling and analytical costs  
424 associated with evaluating quality of the Non-Project Water. Non-Project Water introduced into  
425 Project Facilities for purposes of water quality testing is considered Project water.

426 (f) At all times during the term of this Contract, the Contractor shall be in  
427 compliance with the requirements of the then-current Quality Assurance Project Plan (Plan)  
428 Select appropriate option by the Contracting Officer to monitor Non-Project Water introduced  
429 into and conveyed through the Project Facilities. The Plan describes the sample collection  
430 procedures, water testing methods, and data review process, including quality control/quality  
431 assurance protocols, to verify analytical results.

**Commented [A39]:** Include subdivision (f) as appropriate. If the Plan includes the water quality standards and approved laboratory list, the Plan can be incorporated by reference or included as an exhibit to the contract in lieu of Exhibits D and E referenced in subdivision (e) of this Article. In such cases, subdivision (e) of this Article should be modified accordingly.

432 (g) The Contracting Officer reserves the right to require additional analyses to  
433 ensure the Non-Project Water meets the Bureau of Reclamation's water quality acceptance  
434 criteria.

435 CHARGES FOR DELINQUENT PAYMENTS

436 15. (a) The Contractor shall be subject to interest, administrative, and penalty  
437 charges on delinquent payments. If a payment is not received by the due date, the Contractor  
438 shall pay an interest charge on the delinquent payment for each day the payment is delinquent  
439 beyond the due date. If a payment becomes 60 days delinquent, in addition to the interest  
440 charge, the Contractor shall pay an administrative charge to cover additional costs of billing and  
441 processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to  
442 the interest and administrative charges, the Contractor shall pay a penalty charge for each day the  
443 payment is delinquent beyond the due date, based on the remaining balance of the payment due  
444 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt  
445 collection services associated with a delinquent payment.

Contract No. Insert Contract number here

446 (b) The interest charge rate shall be the greater of either the rate prescribed  
447 quarterly in the Federal Register by the Department of the Treasury for application to overdue  
448 payments or the interest rate of 0.5 percent per month. The interest charge rate will be  
449 determined as of the due date and remain fixed for the duration of the delinquent period.

450 (c) When a partial payment on a delinquent account is received, the amount  
451 received shall be applied first to the penalty charges, second to the administrative charges, third  
452 to the accrued interest, and finally to the overdue payment.

453 EQUAL EMPLOYMENT OPPORTUNITY

454 16. During the performance of this Contract, the Contractor agrees as follows:

455 (a) The Contractor will not discriminate against any employee or applicant for  
456 employment because of race, color, religion, sex, disability, or national origin. The Contractor  
457 will take affirmative action to ensure that applicants are employed, and that employees are  
458 treated during employment, without regard to their race, color, religion, sex, disability, or  
459 national origin. Such action shall include, but not be limited to the following: employment,  
460 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;  
461 rates of pay or other forms of compensation; and selection for training, including apprenticeship.  
462 The Contractor agrees to post in conspicuous places, available to employees and applicants for  
463 employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
464 nondiscrimination clause.

465 (b) The Contractor will, in all solicitations or advertisements for employees  
466 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
467 consideration for employment without regard to race, color, religion, sex, disability, or national  
468 origin.

469 (c) The Contractor will send to each labor union or representative of workers  
470 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
471 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
472 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
473 1965 (EO 11246), and shall post copies of the notice in conspicuous places available to  
474 employees and applicants for employment.

475 (d) The Contractor will comply with all provisions of EO 11246, and of the  
476 rules, regulations, and relevant orders of the Secretary of Labor.

477 (e) The Contractor will furnish all information and reports required by EO  
478 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,  
479 and will permit access to his books, records, and accounts by the Contracting Agency and the  
480 Secretary of Labor for purposes of investigation to ascertain compliance with such rules,  
481 regulations, and orders.

482 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
483 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be

Contract No. Insert Contract number here

484 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
485 ineligible for further Government contracts in accordance with procedures authorized in EO  
486 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246  
487 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

488 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
489 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
490 Secretary of Labor issued pursuant to Section 204 of EO 11246, so that such provisions will be  
491 binding upon each subcontractor or vendor. The Contractor will take such action with respect to  
492 any subcontract or purchase order as may be directed by the Secretary of Labor as a means of  
493 enforcing such provisions, including sanctions for noncompliance: Provided, however, That in  
494 the event the Contractor becomes involved in, or is threatened with, litigation with a  
495 subcontractor or vendor as a result of such direction, the Contractor may request the United  
496 States to enter into such litigation to protect the interests of the United States.

497 CERTIFICATION OF NONSEGREGATED FACILITIES

498 17. The Contractor hereby certifies that it does not maintain or provide for its  
499 employees any segregated facilities at any of its establishments and that it does not permit its  
500 employees to perform their services at any location under its control where segregated facilities  
501 are maintained. It certifies further that it will not maintain or provide for its employees any  
502 segregated facilities at any of its establishments and that it will not permit its employees to  
503 perform their services at any location under its control where segregated facilities are  
504 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal  
505 Employment Opportunity clause in this Contract. As used in this certification, the term  
506 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,  
507 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,  
508 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing  
509 facilities provided for employees which are segregated by explicit directive or are in fact  
510 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,  
511 disability, or otherwise. The Contractor further agrees that (except where it has obtained  
512 identical certifications from proposed subcontractors for specific time periods) it will obtain  
513 identical certifications from proposed subcontractors prior to the award of subcontracts  
514 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment  
515 Opportunity clause; that it will retain such certifications in its files; and that it will forward the  
516 following notice to such proposed subcontractors (except where the proposed subcontractors  
517 have submitted identical certifications for specific time periods):

518 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
519 CERTIFICATIONS OF NONSEGREGATED FACILITIES

520 A Certification of Nonsegregated Facilities must be submitted prior to the award  
521 of a subcontract exceeding \$10,000 which is not exempt from the provisions of  
522 the Equal Employment Opportunity clause. The certification may be submitted  
523 either for each subcontract or for all subcontracts during a period (i.e., quarterly,

38

Contract No. Insert Contract number here

524 semiannually, or annually). Note: The penalty for making false statements in  
525 offers is prescribed in 18 U.S.C. 1001.

526 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

527 18. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
528 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
529 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,  
530 Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities Act of 1990  
531 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.)] [Title III of the Americans with Disabilities Act  
532 of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.)], and any other applicable civil rights  
533 laws, and with the applicable implementing regulations and any guidelines imposed by the U.S.  
534 Department of the Interior and/or Bureau of Reclamation.

**Commented [A40]:** Language appearing in brackets is alternate, depending on the contractor. Use the language referring to Title II if the contractor is a State or local government entity. Use the language referring to Title III if the contractor is a non-government entity.

535 (b) These statutes prohibit any person in the United States from being  
536 excluded from participation in, being denied the benefits of, or being otherwise subjected to  
537 discrimination under any program or activity receiving financial assistance from the Bureau of  
538 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this  
539 contract, the Contractor agrees to immediately take any measures necessary to implement this  
540 obligation, including permitting officials of the United States to inspect premises, programs, and  
541 documents.

542 (c) The Contractor makes this agreement in consideration of and for the  
543 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
544 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
545 Reclamation, including installment payments after such date on account of arrangements for  
546 Federal financial assistance which were approved before such date. The Contractor recognizes  
547 and agrees that such Federal assistance will be extended in reliance on the representations and  
548 agreements made in this Article and that the United States reserves the right to seek judicial  
549 enforcement thereof.

550 (d) Complaints of discrimination against the Contractor shall be investigated  
551 by the Contracting Officer's Office of Civil Rights.

552 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

553 19. (a) The obligation of the Contractor to pay the United States as provided in  
554 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
555 obligation may be distributed among the Contractor's water users and notwithstanding the  
556 default of individual water users in their obligation to the Contractor.

557 (b) The payment of charges becoming due pursuant to this Contract is a  
558 condition precedent to receiving benefits under this Contract. The United States shall not make  
559 Non-Project Water available to the Contractor through Project Facilities during any period in  
560 which the Contractor is in arrears in the advance payment of Rates and charges due the United  
561 States. The Contractor shall not deliver Non-Project Water under the terms and conditions of

Contract No. Insert Contract number here

562 this Contract for lands or parties that are in arrears in the advance payment of rates and charges  
563 as levied or established by the Contractor.

564 BOOKS, RECORDS, AND REPORTS

565 20. (a) The Contractor shall establish and maintain accounts and other books and  
566 records pertaining to administration of the terms and conditions of this contract, including the  
567 Contractor's financial transactions; water supply data; Project operation, maintenance, and  
568 replacement logs; Project land and rights-of-way use agreements; the water users' land-use (crop  
569 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting  
570 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on  
571 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws  
572 and regulations, each party to this contract shall have the right during office hours to examine  
573 and make copies of the other party's books and records relating to matters covered by this  
574 contract.

575 (b) Nothing in this Article 20 shall be construed to limit or constrain the  
576 ability of the Bureau of Reclamation to conduct contract compliance reviews of this Contract in  
577 accordance with Reclamation Manual Directives and Standards PEC 05-08, last revised  
578 November 20, 2014, as may be further revised, amended, modified, or superseded.

579 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

580 21. The expenditure or advance of any money or the performance of any obligation of  
581 the United States under this contract shall be contingent upon appropriation or allotment of  
582 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
583 obligations under this contract. No liability shall accrue to the United States in case funds are  
584 not appropriated or allotted.

585 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

586 22. The provisions of this Contract shall apply to and bind the successors and assigns  
587 of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein  
588 by either party shall be valid until approved in writing by the other party.

589 OFFICIALS NOT TO BENEFIT

590 23. No Member of or Delegate to the Congress, Resident Commissioner, or official of  
591 the Contractor shall benefit from this Contract other than as a water user or landowner in the  
592 same manner as other water users or landowners.

593 CHANGES IN CONTRACTORS ORGANIZATION

Contract No. Insert Contract number here

594 24. While this Contract is in effect, no change may be made in the Contractor's  
595 organization, by inclusion or exclusion of lands or by any other changes which may affect the  
596 respective rights, obligations, privileges, and duties of either the United States or the Contractor  
597 under this Contract including, but not limited to, dissolution, consolidation, or merger, except  
598 upon the Contracting Officer's written consent.

599 NOTICES

600 25. Any notice, demand, or request authorized or required by this Contract shall be  
601 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
602 delivered to Bureau of Reclamation, Insert name and address of the appropriate Area Office, and  
603 on behalf of the United States, when mailed, postage prepaid, or delivered to Insert Contractor  
604 name and address. The designation of the addressee or the address may be changed by notice  
605 given in the same manner as provided in this Article for other notices.

606 INCORPORATION OF EXHIBITS

607 26. Exhibits A through E are attached hereto and incorporated herein by reference.

**Commented [A41]:** If the Quality Assurance Project Plan is incorporated by reference or used as an exhibit to the Contract, the exhibits referenced in this Article will require revision.

608 CONTRACT DRAFTING CONSIDERATIONS

609 27. This Contract has been negotiated and reviewed by the parties hereto, each of  
610 whom is sophisticated in the matters to which this Contract pertains. The double-spaced articles  
611 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party  
612 shall be considered to have drafted the stated articles.

Contract No. Insert Contract number here

613 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of  
614 the day and year first above written.

615 UNITED STATES OF AMERICA

616 By: \_\_\_\_\_  
617 Area Manager  
618 Choose an Area Office name  
619 Mid-Pacific Region  
620 Bureau of Reclamation

621 Insert Contractor name  
622 (SEAL)

623 By: \_\_\_\_\_  
624 President of the Board of Directors  
625 Attest:

**Commented [A42]:** Titles for the Contractor representatives will need to be revised for counties, cities, etc.

626 By: \_\_\_\_\_  
627 Secretary of the Board of Directors

**Commented [A43]:** Titles for the Contractor representatives will need to be revised for counties, cities, etc.

Temporary Warren Act Contract – Year Choose a year  
Choose a use  
Contract No. Insert contract number

**EXHIBIT A**

**CONTRACTOR'S BOUNDARY MAP**

This is a placeholder page. The Contractor's Boundary Map is to be designated as Exhibit A and appended to the contract.

4/13



Temporary Warren Act Contract – Year Choose a year  
 Choose a use  
 Contract No. Insert contract number

**EXHIBIT B**

Insert Contractors name

**YEAR Choose a year STORAGE AND CONVEYANCE RATES  
 (Per Acre-Foot)**

**Commented [A44]:** Rates and footnotes will need to be modified for "Irrigation Only" and "M&I Only" contracts and if no ONFE. Conveyance pumping and storage components are to be added as appropriate.

Cost Component	Irrigation <sup>1</sup> Cost of Service	RRA <sup>2</sup> Full Cost 202(3)	RRA <sup>3</sup> Full Cost 205(a)(3)	Incremental <sup>4</sup> Fee	M&I <sup>5</sup> Cost of Service
Water Marketing					
Conveyance O&M*					
<b>Conveyance O&amp;M Sub-Total:</b>					
Other Costs					
Conveyance Construction					
<b>Sub-Total Conveyance:</b>					
<b>Water Marketing and Conveyance Total:</b>					
<b>Conveyance Pumping Construction Sub-Total:</b>					
Storage O&M					
Storage Construction					
<b>Storage Sub-Total:</b>					
<b>Total Marketing, Conveyance and Storage:</b>					

\*Conveyance operation and maintenance costs were removed for ratesetting purposes and are billed directly by the Operating Non-Federal Entity.

NOTE: If the Non-Project Water is being conveyed through the Contractor's 9(d) distribution system, a separate rate will be developed for that system.

Additional details of rate components are available on the internet at <http://www.usbr.gov/mp/cvpwaterrates/ratebooks/>

<sup>1</sup> The Irrigation Cost of Service Rate is applicable to Eligible Lands that are entitled to receive Irrigation Water at other than a Full-Cost Rate.

<sup>2</sup> The RRA Section 202(3) Full Cost Rate is applicable to a Qualified Recipient or to a Limited Recipient (as those terms are defined in Section 202 of the RRA) receiving Irrigation Water on or before October 1, 1981.

<sup>3</sup> The RRA Section 205(a)(3) Full Cost Rate is applicable to a Limited Recipient (as that term is defined in Section 202 of the RRA) that did not receive Irrigation Water on or before October 1, 1981, and those prior law landholders leasing land in excess of their entitlement.

<sup>4</sup> The Incremental Fee is applicable to Ineligible Lands pursuant to subdivision (b) of Article 9 of this Contract. (Incremental Fee requirements for Ineligible Lands are set forth in 43 CFR 426.15.)

<sup>5</sup> The M&I Cost of Service Rate is applicable to Non-Project Water conveyed and diverted for municipal and industrial purposes. See definition of "Municipal and Industrial Water" in subdivision (j) of Article 1 of this Contract.

44

Temporary Warren Act Contract – Year Choose a year  
Choose a use  
Contract No. Insert contract number

**EXHIBIT C**

**SOURCE(S) OF CONTRACTOR'S NON-PROJECT WATER**  
Insert Contractors name

The source of the Contractor's Non-Project Water Supply, commonly known as "Insert water supply name" is described herein below:

**Commented [A45]:** If applicable.

**Commented [A46]:** This section should describe the type of right (i.e. stock ownership, pre 1914 water right, etc.), and identify the season of and associated quantities of Non-Project Water available under the claimed right. The timeframe for introduction of the Non-Project Water supply and the monthly quantities must correspond to the claimed right.

**Commented [A47]:** The information requirements for evaluating proposed Warren Act contracts are set forth in the "Water Rights Data Checklist for Proposals Involving Non-CVP Water for Water Exchanges, Water Acquisitions, or Warren Act Contracts." This checklist must be sent to the appropriate Repayment Specialist in the Regional Office, MP-440.

25

Temporary Warren Act Contract -- Year Choose a year  
Choose a use  
Contract No. Insert contract number

**EXHIBIT D**

**WATER QUALITY STANDARDS**

This is a placeholder page. The water quality monitoring requirements applicable to the specific Project facilities to be used to convey the Non-Project Water are to be identified as Exhibit D and appended to the Contract.

**Commented [A48]:** If the Contractor has a Reclamation-approved Quality Assurance Project Plan that includes the water quality monitoring requirements applicable to the Project Facilities to be used under this Contract, the Plan can be incorporated into the Contract by reference or designated as an exhibit to satisfy the requirement for the Contract to include water quality monitoring requirements.

44

Temporary Warren Act Contract – Year Choose a year  
Choose a use  
Contract No. Insert contract number

**EXHIBIT E**

**APPROVED LABORATORY LIST**

This is a placeholder page. The Approved Laboratory List for the 2017 water year is to be designated as E and appended to the Contract.

**Commented [A49]:** If the Contractor has a Reclamation-approved Quality Assurance Project Plan that includes a list of approved laboratories, the Plan can be incorporated into the Contract by reference or designated as Exhibit E to the Contract to satisfy the requirement to include a list of approved laboratories.

47

**Document12**

A separate page with the filename information is to be included with the Official File Copy. The filename information is not to be included with the contracts sent to the Contractor. Right click Document1 and select update field to update filename.

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# Orestimba Creek Recharge & Recovery Expansion Project

Del Puerto Water District, Central California Irrigation District and San Joaquin River Exchange Contractors Water Authority



Date: April 2021  
Presented by: Rick Iger










# Project Vicinity Topo Map

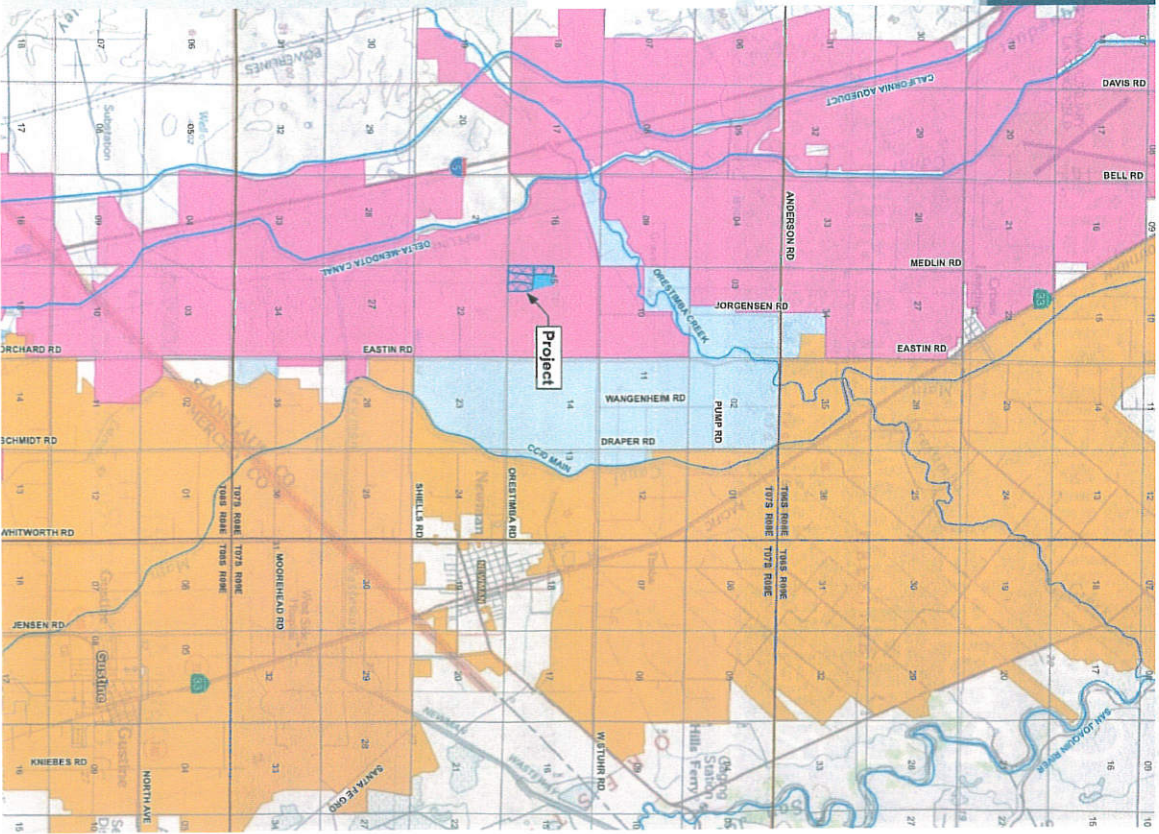
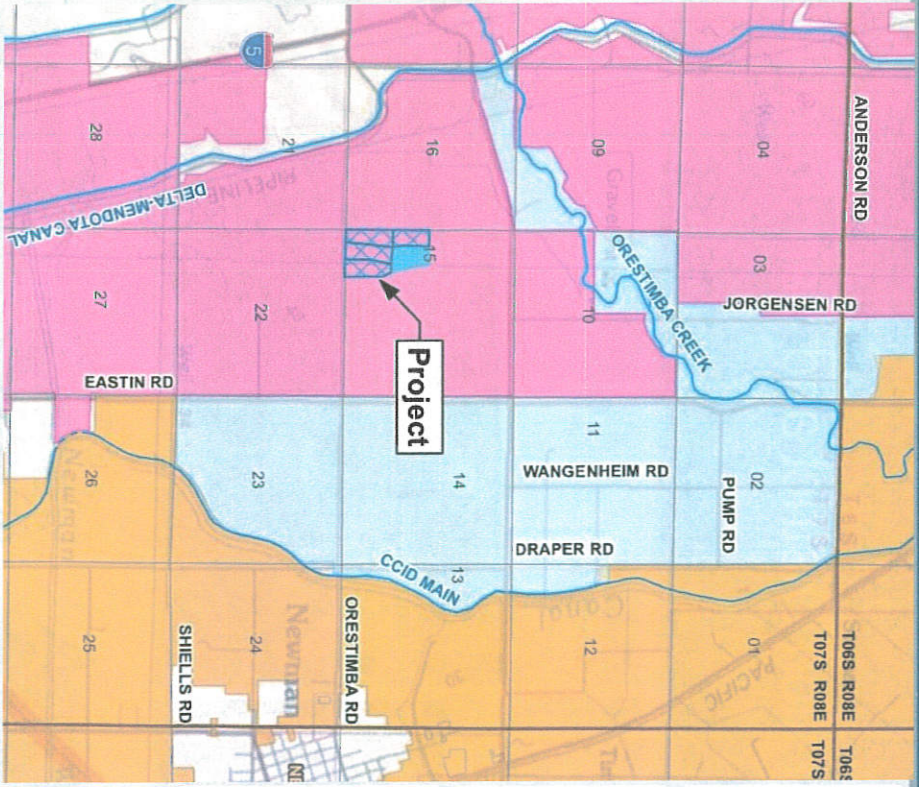
Orestimba Creek Recharge & Recovery Expansion Project

Vicinity Map

Pond Location Property

-  Proposed Recharge Pond
-  Existing Recharge Pond
-  Del Puerto Water District
-  Eastin Water District
-  Central California Irrigation District

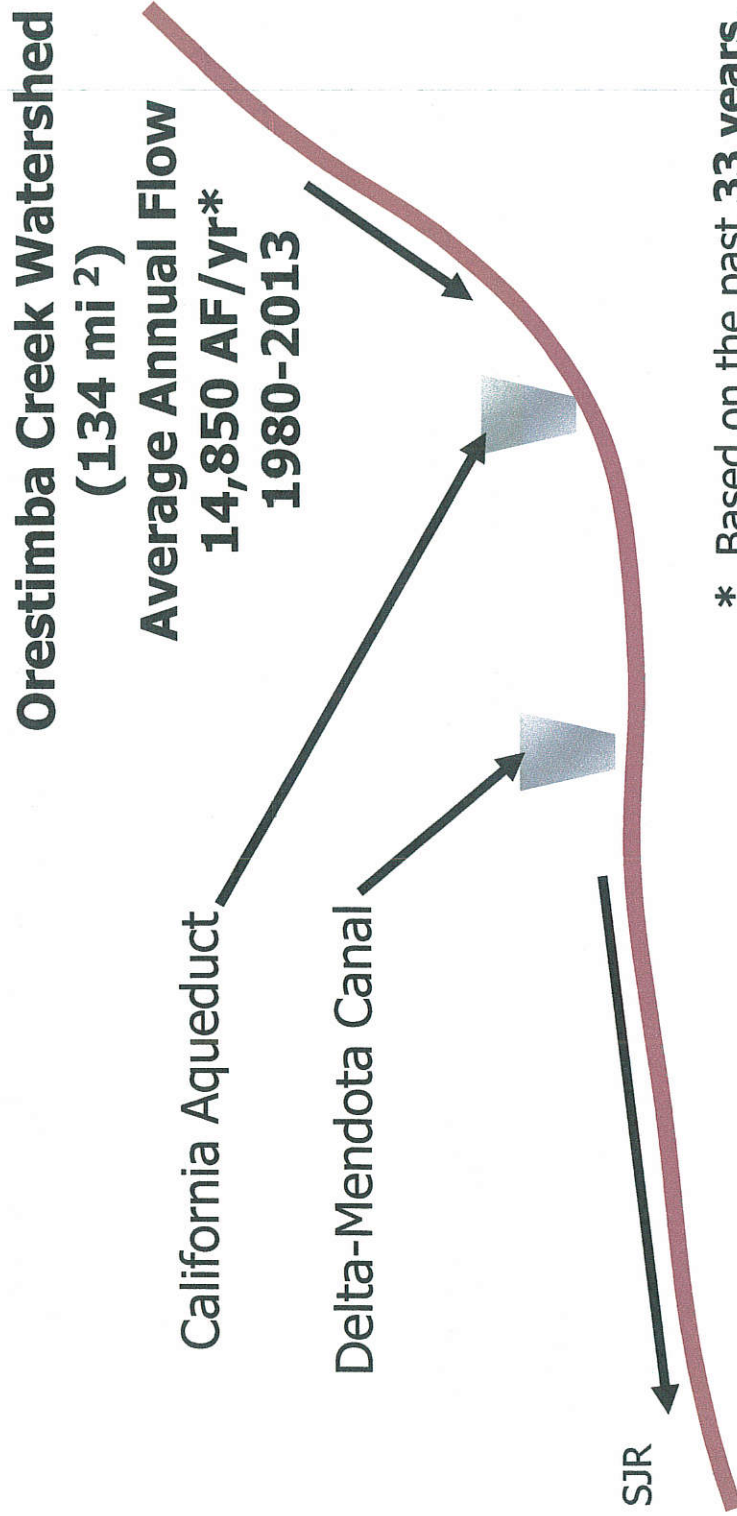
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**PROVOST & PRITCHARD**  
CONSULTING GROUP



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# Hydrology Background



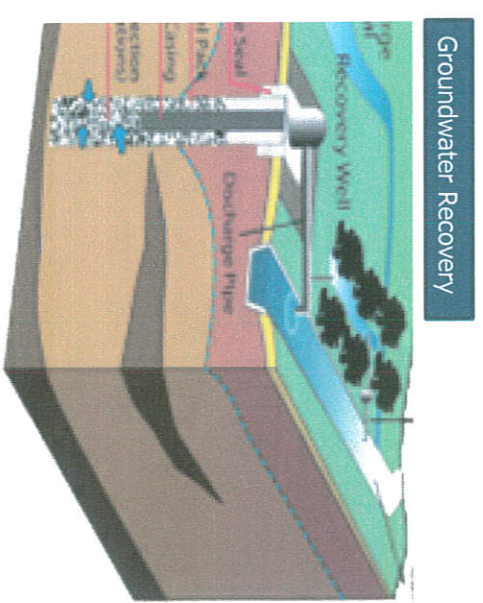
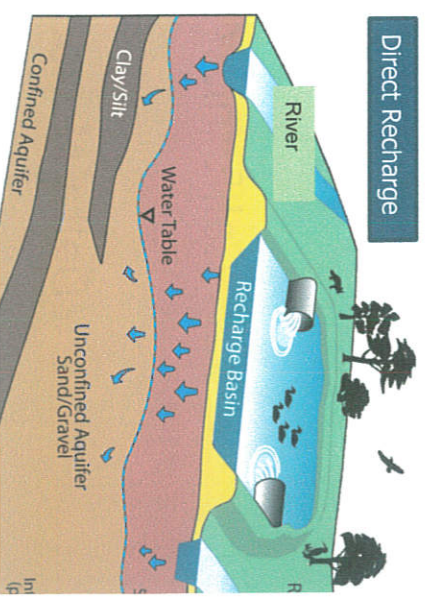
\* Based on the past **33 years**, approximately **490,000 AF** of Creek flow has been observed past the Aqueduct

51

# Project Goals

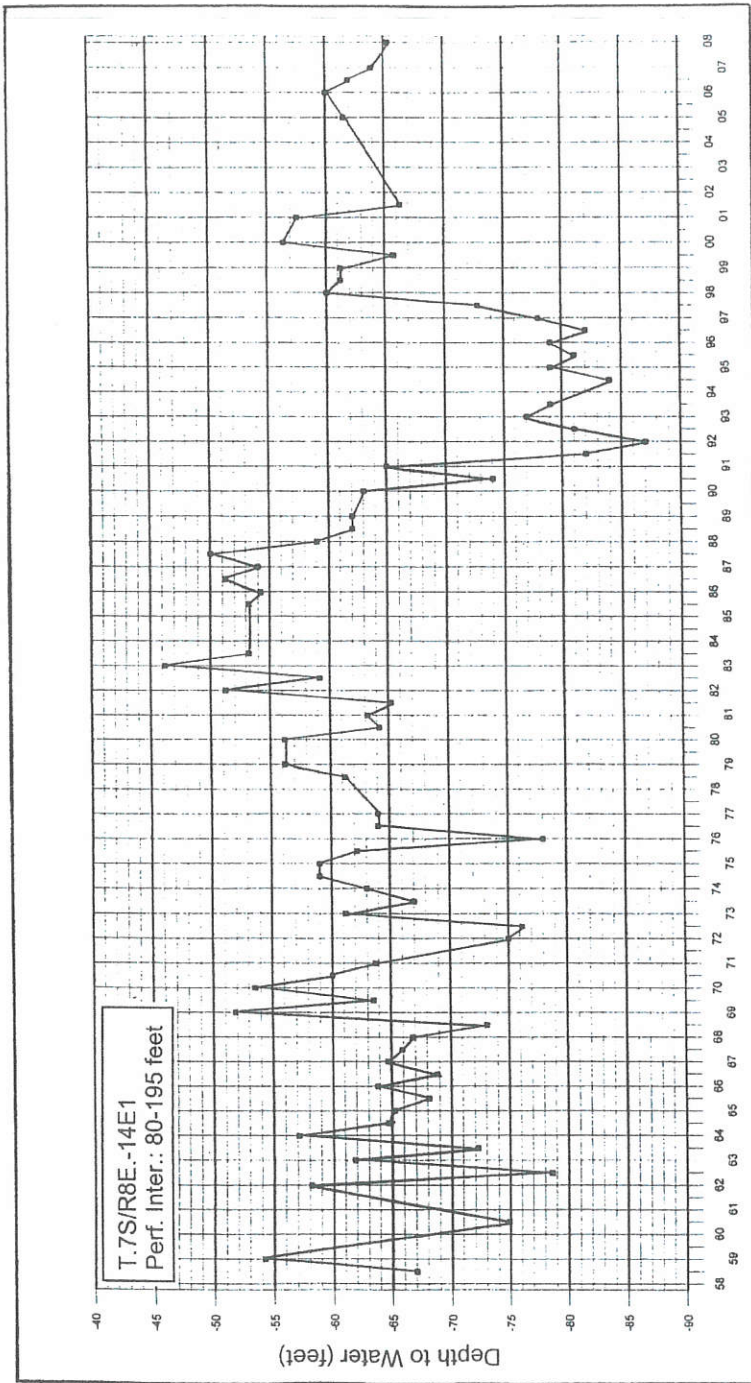
Develop recharge ponds and recovery wells capable of the following:

- Maximize the quantity of direct recharge (22,000 acre-feet in one wet year to recover in two subsequent dry/Critical years).
- Store available supplies for later recovery and use over two years (20,000 acre-feet).
- Recover stored supplies in two years (10,000 acre-feet per dry year; 5,000 AF each in Critical Years).
- Convey recovered water into DMC and/or CCID Main Canal.





# Groundwater Fluctuations in the Orestimba Subbasin



Modified from CCID

FIGURE 6-LONG-TERM WATER-LEVEL HYDROGRAPH FOR SUPPLY WELL IN ORESTIMBA CREEK AREA

53

# Initial Groundwater Parameters and Values

Parameter	Value*
Total Storage Capacity	15,000 to 30,000 acre-feet
Recharge Rate	0.5 – 1.0 feet/day
Groundwater Depth – Dry Year	60 – 90 feet
Groundwater Depth – Wet Year	35 – 75 feet
Well Pumping Capacity	1,500 – 2,600 gal/min
Transmissivity	150,000 gal/ft/day
Specific Capacity	63 – 113 gal/min/ft drawdown

\*Source: Kenneth D. Schmidt and Associates, Groundwater conditions in and near the Eastin Water District, February 2000.

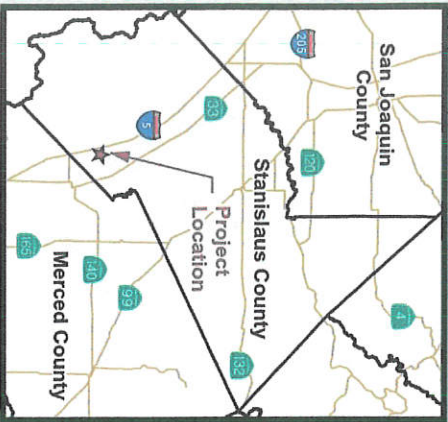
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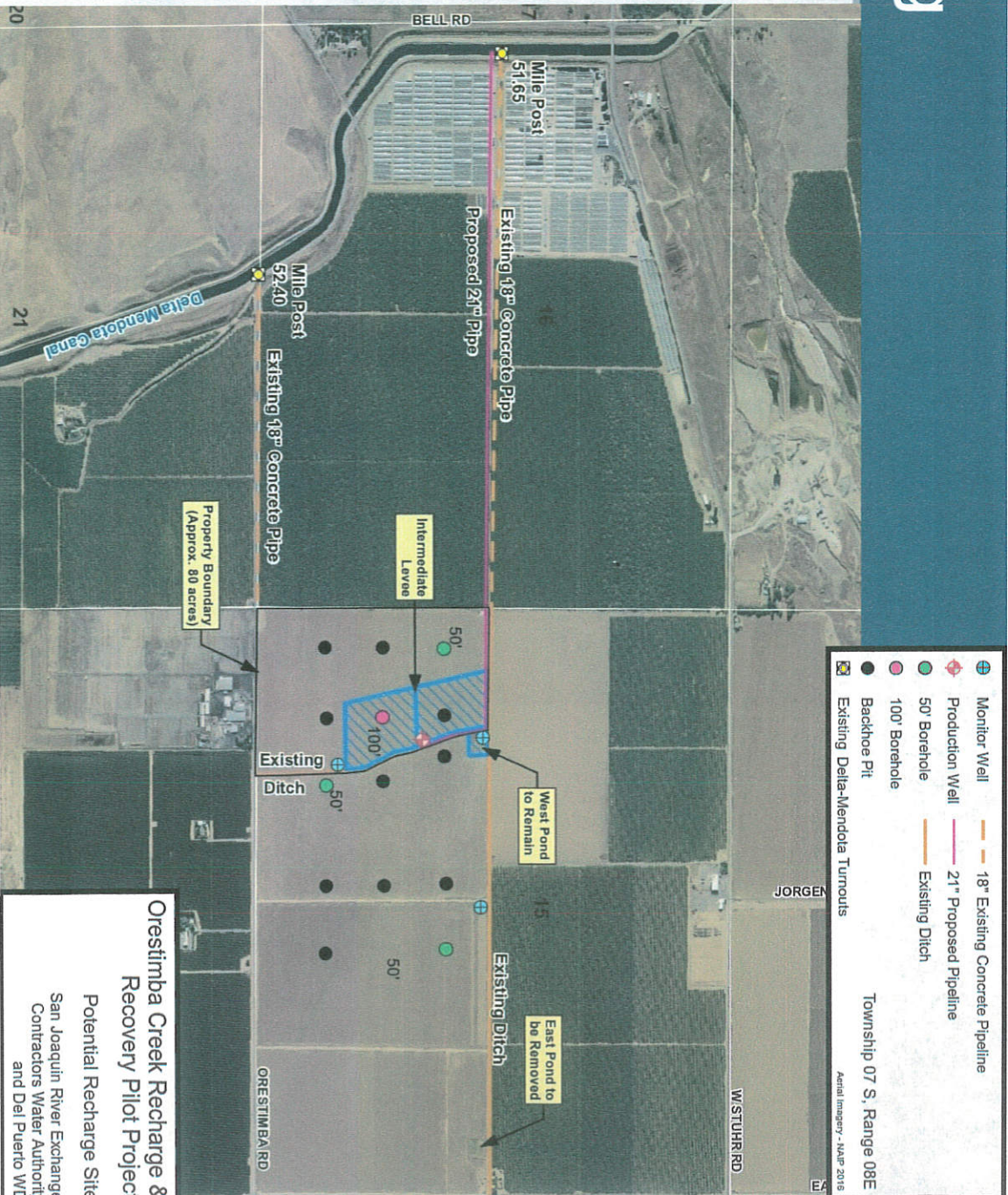


# Pilot Project Testing



- To determine the best location for the test ponds;
- Three 50' and one 100' geologic borings along with 10 backhoe pits were dug
  - Two 10-acre ponds were constructed in 2018

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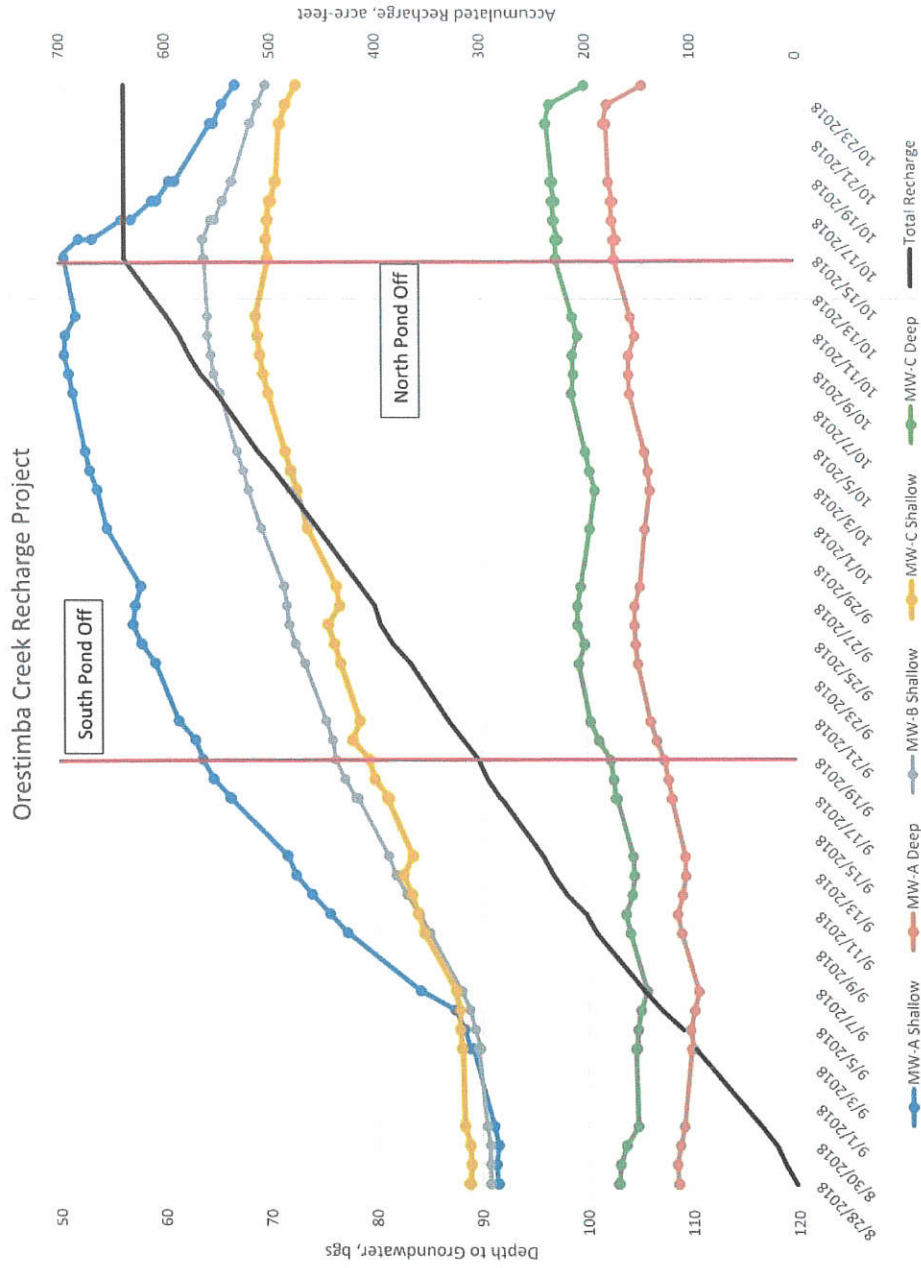


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# Pilot Project 2018 Test Results

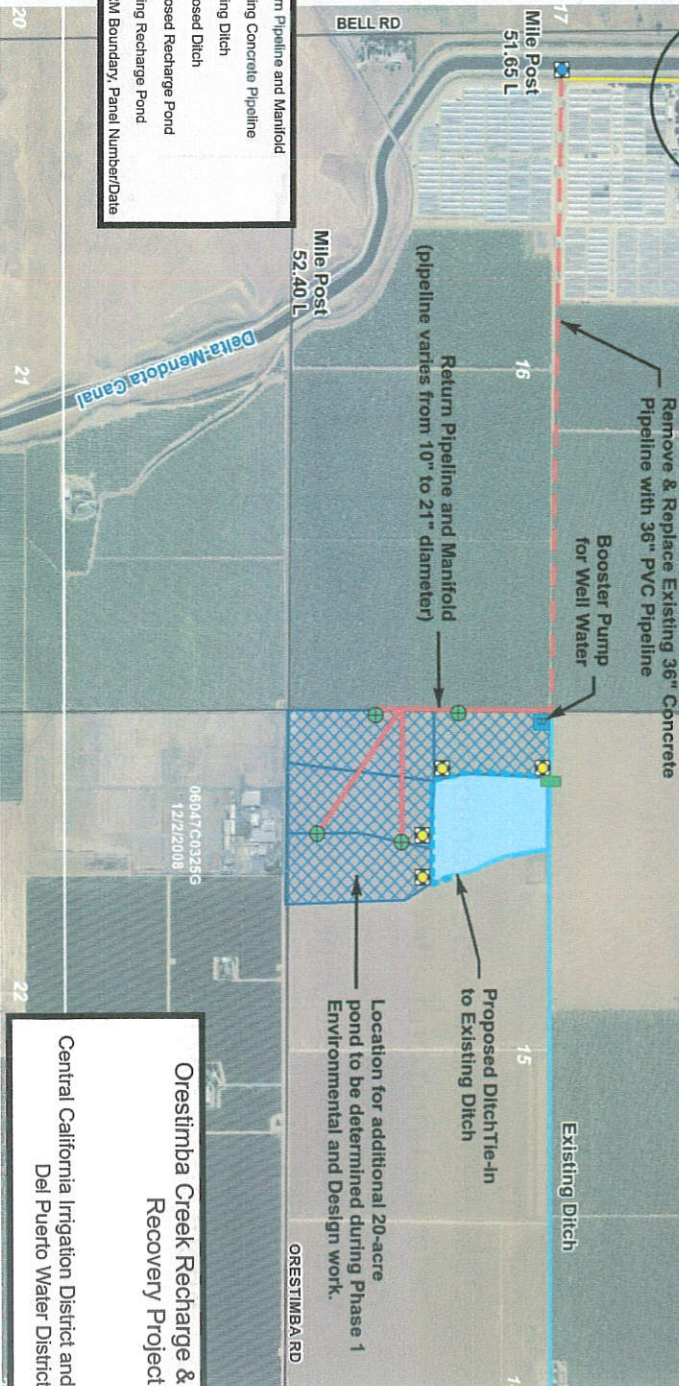
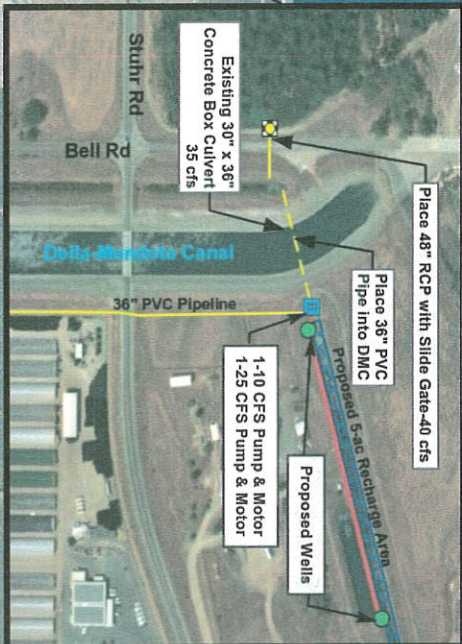
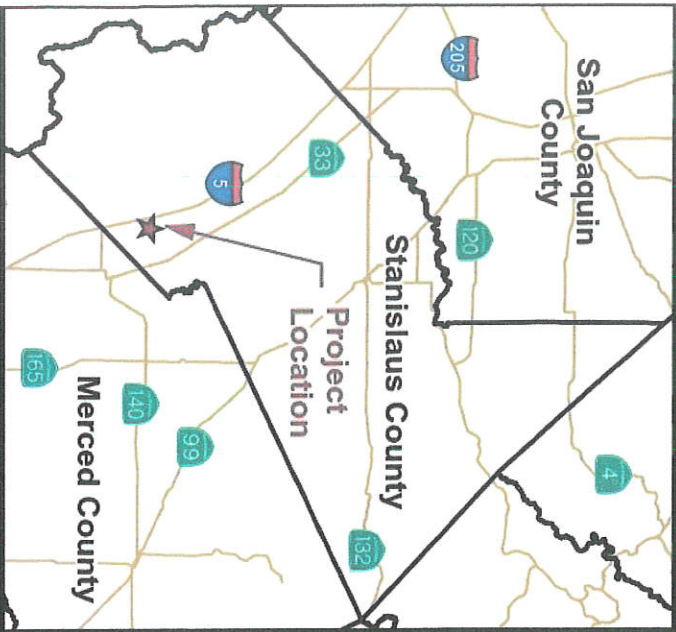
- Recharge tests were conducted from August 28 through October 15, 2018
- About 640 acre-feet was delivered for recharge
- Only about 5 acres of each 10-acre pond were covered with water
- Recharge rates reached 2.6 feet per day
- Observation wells were monitored before, during and after the delivery of water
- Water levels rose approximately 20 feet in the shallow aquifer and 10 feet in the deep aquifer and about 40 feet beneath the ponds



57



# 2018 FEMA Grant Proposal



- |  |                          |  |                                   |
|--|--------------------------|--|-----------------------------------|
|  | Proposed Booster Pump    |  | Return Pipeline and Manifold      |
|  | Proposed Check Structure |  | Existing Concrete Pipeline        |
|  | Proposed DMC Turnout     |  | Existing Ditch                    |
|  | Proposed Turnout         |  | Proposed Recharge Pond            |
|  | Proposed Wells           |  | Existing Recharge Pond            |
|  | Proposed CBC Under DMC   |  | DFIRM Boundary, Panel Number/Date |
|  | Proposed Pipeline        |  |                                   |

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Orestimba Creek Recharge & Recovery Project  
Central California Irrigation District and Del Puerto Water District

85



# Orestimba Creek Recharge & Recovery Expansion Project Summary

- Proposed pond locations are on currently active farmland within DPWD.
- Existing 7 cfs pipeline can serve 5 acres; larger pipelines needed for 80-acre site. (Second existing pipeline available along Orestimba Rd would also need enlargement).
- Recharge rate tested at 2.6 ft per day at 20-acre Pilot Project. (Without larger pipe recharge capacity would be limited to 420 AF per day; 2,100 AF per year using 5 months recharge).
- Maximum storage capacity of aquifer = 25,000 AF (KSA, 2000 and 2011).
- Maximum dry year recovery of Pilot Project = 0.7 cfs; 300 gpm.
- Well capacity goal is 1,350 gpm providing 6 AF per day per well. Eight wells provide 48 AF per day, which over 7 months yields 10,000 AF (March – September).

## Benefit Goals

- Additional Recharge and Conservation of Local Runoff in one out of three years.
- Recharge and storage of DPWD and Exchange Contractor supplies.
- Decreased groundwater pumping lift and resulting energy savings.
- Improved Water Supply Sustainability.
- San Luis Reservoir Carry-Over Protection.
- Decreased flooding along Orestimba Creek.



## Stormwater Grant Project Mitigation Strategies, Actions and Benefits

- Reduces flooding in SJR and Orestimba Creek resulting in peak flow reduction:
  - 80 Acres at 2 AF/Ac = 160 AF/Day or 80 cfs.
- Diverts 4,800 acre-feet/month out of the floodplain and into groundwater storage.
- Decreases reliance on natural aquifer yield above and below Corcoran Clay, resulting in less subsidence.
- Allows well pumping to occur in part of aquifer and Basin not known for causing subsidence.
- Adds about 20,000 Acre Feet to Basin over 30 years.





# Project Recharge and Recovery Yield

## Recharge and Recovery Yields Over 30-year Project Life

Description	SJRECWA	DPWD	Totals
Share of Creek Water	50%	50%	100%
Total Water Recharged	33,000 AF	176,000 AF	209,000 AF
Creek Water Recharged	14,385 AF	14,385 AF	28,770 AF
Section 215 or Other Supplies	18,615 AF	95,615 AF	114,230 AF
Carryover Water Recharged	0	66,000 AF	66,000 AF
Total Water Recovered	30,000 AF	158,400 AF	188,400 AF
Total Leave Behind	3,300 AF	17,600 AF	20,900 AF
Leave Behind from Creek	1,439 AF	1,439 AF	2,878 AF



# Project Costs Less Grants and Costs per Acre Foot of Dry/Critical Year Recovery Yield

Capital Cost	
20-Acre Capital Cost	\$ 1,160,000
60-Acre Capital Cost	\$12,660,905
Total 80-Acre Capital Cost	\$13,820,905
Total Grants	\$9,425,428 (68%)
Total Capital Cost Less Grants	\$4,395,477 (32%)

## 80 Acre Recharge and Recovery Project Cost per Acre Foot Summary

District	Estimated 1-Year Yield (AF)	Estimated 30-Year Yield (AF)	Capital Cost over 30-Year Yield (\$/AF)	Average Annual O&M Costs per AF (\$/AF)	Average Annual Cost (\$/AF)
SJRECWA	5,000 <sup>1</sup>	30,000	\$73.00	\$75.00	\$148.00
DPWD	10,000 <sup>2</sup>	158,400	\$14.00	\$122.00	\$136.00

<sup>1</sup> 11 Year Yield refers to desired recovery amount in each of 2 years out of every 10 years to accommodate the anticipated SJRECWA Critical Years, subsequent columns reflect the 30-year recovery goal.

<sup>2</sup> 21 Year Yield refers to desired recovery amount for DPWD in a non-critical year for SJRECWA. In Critical Years it would be half of 10,000 AF or 5,000 AF.



# SWRCB Stormwater and DWR IRWMP Grants

## Status and Next Steps

- Notice of Contingent Award for IRWMP Grant Provided to CCID in October 2020 for \$7.9 Million Project:
  - \$0.8 M Grant; \$7.1 M Other Cost Share.
- Notice of Contingent Award for Stormwater Grant Provided to CCID in February 2021 for \$8 Million Project:
  - \$5.6 M SWGP Grant; \$0.8 M IRWMP Grant; \$1.6 Local.
  - Facilities added post Grant Application; \$4.4 Million.
- Biological and Cultural Surveys scheduled for April 26 – May 7.
- Environmental and Permitting to be completed in Phase 1 of Grant Project by December 2021.
- Construction to be completed in Phase 2 starting March 2022.



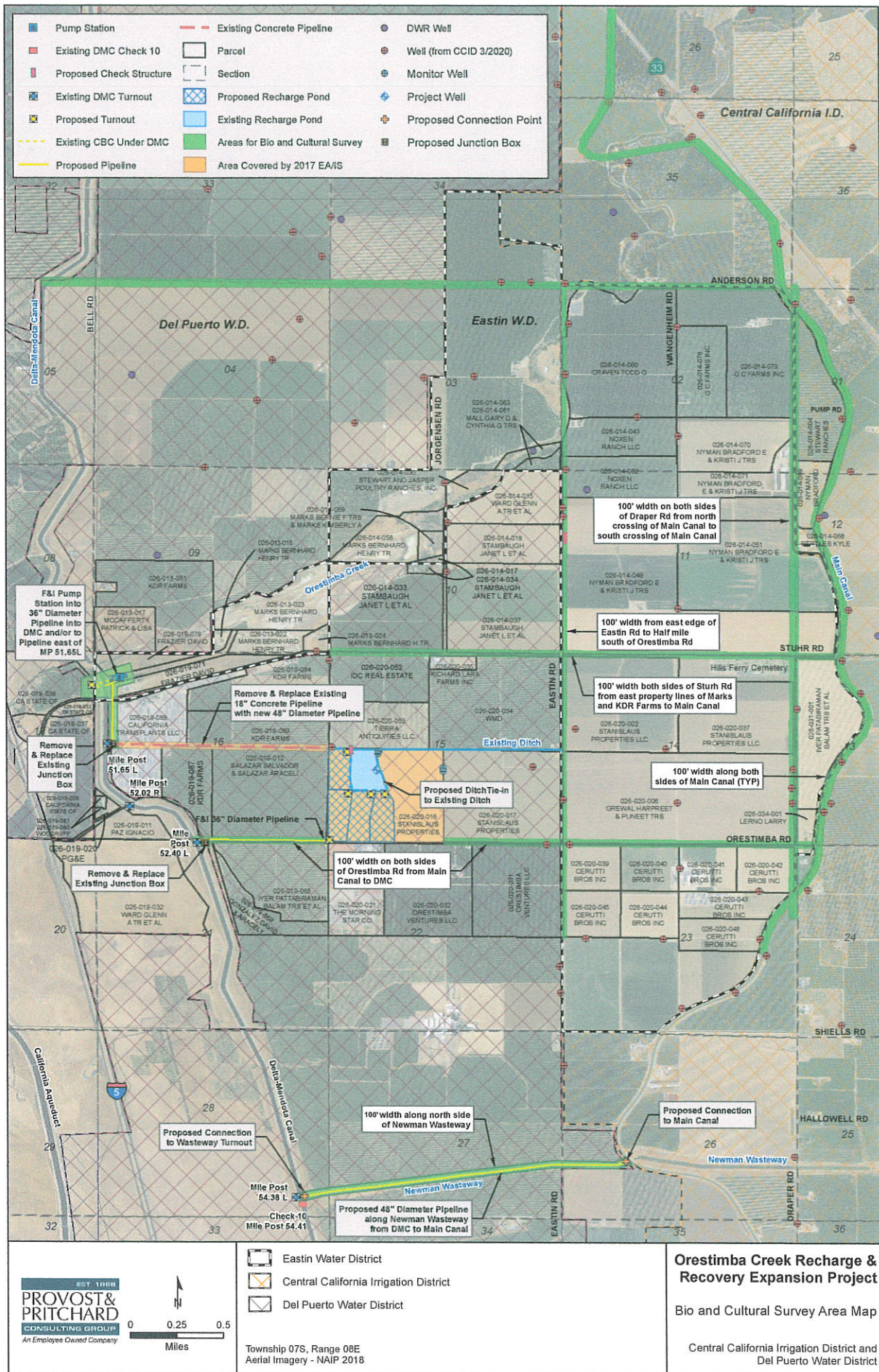






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EST 11018  
**PROVOST & PRITCHARD**  
 CONSULTING GROUP  
 An Employee Owned Company

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 Miles

Township 07S, Range 08E  
 Aerial Imagery - NAIP 2018

- Eastin Water District
- Central California Irrigation District
- Del Puerto Water District

**Orestimba Creek Recharge & Recovery Expansion Project**  
 Bio and Cultural Survey Area Map  
 Central California Irrigation District and  
 Del Puerto Water District

466





VI. D.

MEMO

To: Jarett Martin  
From: Ken Schmidt  
Topic: Orestimba Creek  
Date: April 15, 2021

I have reviewed information on subsurface geologic conditions and groundwater quality for the area along the Main Canal between W. Stuhr Road and Fink Road. The goal is to determine where the lowest salinity groundwater is. Figure 1 shows the locations of CCID wells along the Main Canal. At Well No. 3, the Corcoran Clay was in the interval from about 220 to 250 feet in depth. At Well No. 53, the Corcoran Clay was in three layers between 236 and 320 feet in depth. At Well No. 45A, the Corcoran Clay was present in three layers between 230 and 330 feet in depth. At Well No. 50A, the Corcoran Clay was present in three layers between 195 and 375 feet in depth.

There are three upper aquifer CCID wells (No. 4, 45A, and 52A) in this area. There is one lower aquifer CCID well (No. 50A) in this area. The other CCID wells in the area are composite wells, tapping both aquifers. For the upper aquifer wells, electrical conductivities ranged from about 1,600 to 1,700 micromhos per centimeter at 25° C in water from Wells No. 4 and 45A, whereas the electrical conductivity was about 1,150 micromhos for Well No. 52 (near Orestimba Creek and Highway 33). The electrical conductivity was about 1,000 micromhos in water from Well 50A (the lower aquifer well adjacent to Well 52A).

For the composite wells, electrical conductivities were highest (1,550 to 1,600 micromhos) at wells No. 36 and 53 (to the south). The lowest electrical conductivities (1,100 to 1,250 micromhos) were in water from wells No. 13 and 47A. Well No. 47A was the most northerly well, north of Cherry Avenue and Crows Landing.

In the City of Newman, the lowest salinity groundwater had a TDS concentration of about 540 mg/l, equivalent to an electrical conductivity of about 800 micromhos. This was for Well No. 9, a composite well. A test hole east of Highway 33 in Newman had a TDS concentration of 520 mg/l in water from below the Corcoran Clay. There is a private well (no. 497) in the northwest quarter of the northeast quarter of Section 2 that had an electrical conductivity of 740 micromhos.

There is an electric log for CCID Well No. 52A. The long normal resistivity (LNR) curve provides an indication of the sa-

67

linity at different depths. The highest resistivities (averaging 39 ohm meters<sup>2</sup>/meter) were between 118 and 164 feet in depth. The LNR for strata between 160 and 190 feet in depth averaged about 17.5 ohm meters<sup>2</sup>/meter. This indicates that the electrical conductivity in this interval would be about twice that of water in the 118 to 164 foot depth interval. The electrical conductivity for Well No. 52A, which is perforated from 110 to 210 feet in depth has been about 1,100 to 1,200 micromhos. It is likely that the electrical conductivity of water in the interval between 118 and 164 feet in depth is about 700 to 800 micromhos. This lowest salinity groundwater appears to be in a sand and gravel layer about 46 feet thick at Well No. 52A. My opinion is that a properly constructed and developed well tapping strata in this interval would probably produce about 700 gpm.

A series of shallow wells (12-inch I.D. PVC) could be installed along the Main Canal between J.D. Crow Road and the crossing of Highway 33 to tap this water.

Please call me if you have any questions.

R. 8 E.  
R. 9 E.

T. 6 S.  
T. 7 S.

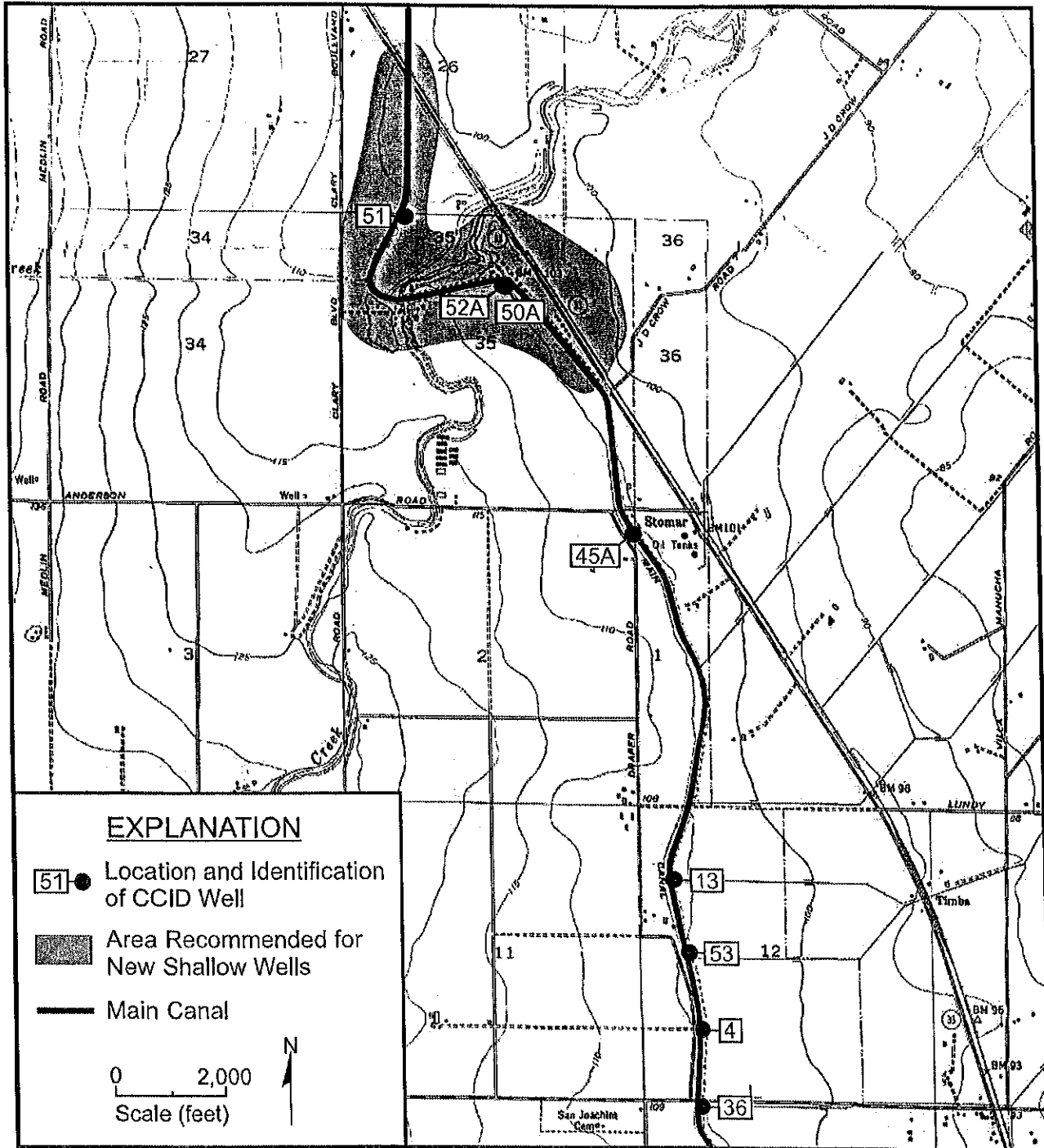


FIGURE 1-LOCATION OF CCID WELLS ALONG MAIN CANAL

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V.I.D.

**LEASE AGREEMENT  
AND OPTION TO PURCHASE REAL PROPERTY INTEREST**

This LEASE AGREEMENT AND OPTION TO PURCHASE REAL PROPERTY INTEREST (this "Lease") is made and entered into on this 22nd day of November, 2017, by and between the DEL PUERTO WATER DISTRICT, a political subdivision of the State of California (hereinafter referred to as "DPWD"), the CENTRAL CALIFORNIA IRRIGATION DISTRICT, an irrigation district formed and existing under Division 11 of the California Water Code (hereinafter referred to as "CCID"), collectively hereafter as "DISTRICTS" and STANISLAUS PROPERTIES, LLC, a Colorado limited liability company hereinafter referred to as "Landowner". This Agreement is entered for full and adequate consideration, and shall be effective from and after January 1, 2017.

1.0 **Background of Agreement.** The parties agree that the following background facts are true and correct and are incorporated within the terms and provisions of this Agreement:

1.1 Landowner is the owner of that certain real property described in Exhibit A attached hereto, within the Southwest 1/4 and the Southeast 1/4 of Section 15, Township 07 South, Range 08 North MDB&M, commonly known as APN No. 026-020-016 and 026-020-017 consisting of approximately 320 gross acres.

1.2 Districts have provided for construction and operations pursuant to an Easement and License Agreement with Landowner of a 1-acre spreading pond on a portion of Landowner's property pursuant to an Agreement entered into on or about the 19<sup>th</sup> day of November, 2014, included herein for reference as Exhibit B. The use of the portion of Landowner's land for the purposes of the Easement and License Agreement has been completed

and there is enough information to indicate that further development of expanded recharge ponds, monitoring and production wells as shown in Exhibit C to Exhibit B, and testing of the site is justified. There is also sufficient information to indicate, provided that further enhanced testing and observation performed by Districts on a 20-acre portion of the land so indicates economic and physical feasibility in the sole judgment of Districts, that Landowner and Districts should come to mutual agreement regarding the terms of a an option to purchase up to an 80-acre portion of the real property.

1.3 Districts have expressed interest in the possibility of purchasing greater than the 80 acres currently acceptable for sale by Landowner. The parties agree to work cooperatively and communicate timely should facts and circumstances change such that an opportunity might arise that better meets the then-current desire of either party.

2.0 **Lease and Lease Terms.** Landowner hereby leases to the Districts a portion of Landowner's real property described in Exhibit A, as such leased portion is specifically shown in the diagram attached as Exhibit C (hereafter "Leased Premises"). The Leased Premises is leased to the Districts by Landowner for the purposes of construction and operation of enlarged recharge ponds, monitoring and production wells, and similar facilities useful in determining whether or not groundwater recharge can be successfully conducted utilizing a larger portion of Landowner's lands, as such purposes are further set forth in Section 5. Landowner and Districts agree that the area of the Leased Premises and subject to this Lease shall be deemed to be 20 acres, and that an annual lease payment of \$400.00 per gross acre shall be paid by Districts in the total sum of \$8,000.00 per year retroactive to January 1, 2017 and each January 1 thereafter until the Lease shall be terminated as provided herein.



3.0 **Term.** The term of this Lease shall commence on January 1, 2017 and continue for successive one (1) year periods until Districts provide written notice of intention to terminate the Lease on December 31 at least ninety (90) days prior to the end of an annual term. Landowner shall have a right to terminate the Lease commencing on or after December 31, 2021 by providing prior written notice at least one (1) year prior to the December 31 in which the annual term shall be terminated. The purpose of this term is to provide for sufficient flexibility for Districts to determine whether or not larger or more expansive facilities can efficiently function upon the site, and to provide for an opportunity to organize the financing and availability of funds to provide for the purchase of the real property and the construction and operation of expanded facilities.

4.0 **Easement and License Rights.** Landowner has previously granted Districts easement and license rights in the Easement and License Agreement dated November 19, 2014. Those easement and license rights shall remain in full force and effect and underlie the rights granted by this Lease until such time as this Lease shall be terminated. The right of access provided to Districts, their agents, employees and representatives provided in Paragraph 4 of the Easement and License Agreement shall remain in full force and effect.

5.0 **Purposes of Lease.** Landowner grants this Lease to Districts solely for the purposes of constructing, maintaining, operating and measuring potential or actual recharge to groundwater which may be conducted upon the Leased Premises through the construction, operation and manipulation of recharge pond facilities within the Leased Premises. The activities to be conducted shall include monitoring through existing or hereafter constructed monitoring and production wells within the Leased Premises and as described in Paragraph 2 of

Exhibit B, the Easement and License Agreement for the purposes of measuring or estimating the recharge impacts, if any, of applying water within the Leased Premises for recharge of groundwater.

6.0 **Condition of Real Property upon termination of Lease.** If Districts do not exercise their option to purchase the real property and Landowner gives notice of termination of the Lease or Districts give notice of termination of the Lease, Districts shall conclude their recharge activities and testing and provide for the removal and rough grading of the recharge ponds and return of the land surface to its level and condition prior to the construction of the recharge ponds and commencement of the testing. Upon termination of the Lease, notwithstanding the effective date of termination of the Lease, Districts shall continue to be responsible for any claims of damages or liability to or by third parties caused by or arising from or related to the use during the term of this Lease or the prior Easement and License Agreement of the Leased Premises by Districts pursuant to the terms of this Lease and the predecessor Easement and License Agreement and the obligation to indemnify and defend Landowner as to the activities, undertakings or omissions of Districts pursuant to the terms of those agreements shall survive the termination of the Lease.

7.0 **Option to Purchase a portion of the real property described in Exhibit A, including the Leased Premises.** Landowner hereby grants to Districts, jointly and severally, the option and right to elect to purchase an 80-acre portion of the real property described in Exhibit A, consisting of the Leased Premises of 20 acres plus an additional contiguous 60 acres, as shown in Exhibit D, and which shall be referred to in this Lease as the "Option Property". The exercise of the option to purchase shall be made in writing on or before the effective date of

termination of this Lease and shall be irrevocable. Upon such an exercise, the value of the Option Property for agricultural purposes and of the easements for the monitoring wells existing or sought as part of the election to purchase shall be initially determined for the parties by hiring a certified agricultural appraiser to prepare an appraisal of the reasonable market value of the Option Property using the sales comparison, income and cost approaches to such appraisals. The appraiser shall not assign any additional value to the Property due to its proximity to the recharge project or any perceived groundwater benefits associated therewith. For purposes of valuation, the groundwater yield of the appraised property shall be consistent with that of similarly situated properties in the Delta – Mendota Sub-basin. If Districts in their notice of election to purchase specify any additional access easements or utility easements not then being utilized pursuant to the leased interests, the appraiser shall determine the reasonable value of the Option Property together with those easements and utility access rights sought. If no additional easements for ingress, egress or utility access are sought pursuant to the notice from the Districts and the ingress, egress and utility access to be acquired will only be those rights exercised in conjunction with and as a non-exclusive easement with the remaining land of Landowner specified in the Lease description and the drawing shown in Exhibit B, no additional value shall be ascribed to those easements or utility access rights exercised on a non-exclusive basis.

7.1 Districts shall pay the costs of that written appraisal and copies shall be provided to each of CCID, DPWD and Landowner. The parties shall then attempt to agree as to the reasonable market value of the real property interests utilizing the written appraisal for reference. If the parties are unable to reach agreement within sixty (60) days of delivery of the written appraisal being delivered to each of the parties, Districts and Landowner shall then

attempt to agree to an MAI or equivalent qualified appraiser to provide for a further appraisal of the Option Property, the cost of which is to be borne one-half by Landowner and one-half by Districts. If the parties are unable to agree to the identity of such appraiser, each party shall submit at least two (2) names of qualified candidates to the Superior Court of the County of Stanislaus who shall choose one (1) appraiser to prepare such appraisal and submit that appraisal to the parties. That appraisal amount of the fair agricultural market value of the Option Property subject to the option election by Districts shall be final and binding upon the parties and shall be paid in cash monies by Districts into escrow within sixty (60) days of the filing of the appraisal of the fair market value of the interests in real property with the Stanislaus County Superior Court or the Parties, if the appraiser was chosen by an agent of the Parties.

7.2 An escrow shall be established with a qualified Title Company and Landowner shall bear all costs of providing for removal of any exceptions on the Preliminary Title Report that the parties agree to have removed including removal of any exceptions which may be added by updates of the Preliminary Title Report after establishment of the escrow, at Landowner's sole cost and expense.

7.3 Landowner and Districts shall each pay one-half of the costs of CLTA title insurance, the escrow fees, any recording fees or documentary tax stamps, or County transfer taxes.

7.4 The real property taxes and assessments on the Option Property purchased by Districts shall be prorated as of the date of close of escrow with the Landowner paying all taxes, assessments and standby charges proportioned to the period prior to the close of escrow, and Districts paying or bearing any of those costs for the period after close of escrow. If there

shall be any improvement assessments for the capital costs or debt service of capital costs upon improvements installed or maintained by public agencies appurtenant to the real property, Landowner shall apply for pre-payment of those improvement assessments and shall pay the full amount of improvement assessments apportioned to the acreage acquired by Districts.

7.5 No real estate agent or broker has been employed by either Landowner or Districts, and neither party shall bear any costs of brokerage commissions or similar payments to any third party. If a claim is made by a third party to a brokerage or real estate agent, the party whose activities are contended to give rise to that claim shall provide for the defense of and shall indemnify the other parties to this Agreement, and if liability is found, shall be liable for the payment of that commission or brokerage amount, if any.

7.6 Districts represent that the purchase is not subject to any requirement of providing for a subdivision or parcel map, is not subject to the minimum parcel size requirement for water facilities of this nature, and is not subject to any other approval by Stanislaus County or any other governmental body or political subdivision. Nevertheless, if Districts exercise their option to purchase, Districts will cause to be prepared a survey and provide for recordation of a Record of Survey showing the dimensions of the Option Property, the remainder of the Landowner's property, and the location of any access easements, utility easement or similar easements for the purposes of providing Landowner with defined boundaries upon close of escrow and defined non-exclusive easements for access upon the other portions of Landowners real property. If the purchase shall involve the purchase of easements for monitoring well sites located upon the remaining property of Landowner, the easements for those monitoring well sites shall include the area surrounding those monitoring wells providing for reasonable protection of

those monitoring wells by interference by activities upon the remaining and surrounding lands of Landowner and Districts shall be obligated by its terms of the easements to maintain warning signs notifying of the presence of the monitoring well apparatus and site.

7.7 If Landowner requests that Districts cooperate in providing for a tax-free exchange in regard to the proceeds payable to Landowner, Districts agree to reasonably cooperate in executing documents and providing for a direct, simultaneous or deferred exchange of interests in real property; provided, however, Districts shall not be obligated to take title to any other real property, and Landowner will execute the customary agreements providing that Landowner will bear all costs associated with the tax-free exchange, and that Districts and its agents, employees and representatives shall have no liability of whatsoever nature or kind for any expense or for any condition or event which renders the tax-free exchange ineffective in deferring or reducing income or other taxes. Landowner shall execute in favor of Districts, their officers, employees and independent contractors, an agreement to indemnify, hold harmless and defend those parties from any claims or liability arising from or related to the tax fee exchange requested by Landowner. If Landowner requests that Districts certify that the acquisition of title is an involuntary acquisition under the Internal Revenue Code, Districts and its officers, agents and representatives will reasonably cooperate in that affirmation. Districts shall not be obligated nor asserted to have provided any tax advice to Landowner, and Landowner shall obtain its own legal counsel and tax advisors to advise it in regard to the treatment of the proceeds of sale or in regard to use of an exchange device on procedures.

7.8 Upon the Districts exercise of the Option and satisfaction of each of the conditions of sale, the Districts shall record a Grant Deed.

a. The Grant Deed shall include, among other reasonable and customary elements, the following covenants that shall run with the land:

i. "The Districts anticipate the conduct of groundwater recharge activities on the "Option Property", which may create advantageous groundwater conditions in the immediate vicinity thereof.

Notwithstanding such activities, covenantor, Stanislaus Properties, LLC, on behalf of itself and each and every of its successors and assigns, covenants and agrees that it shall possess no greater rights with respect to groundwater extractions and use on those remainder portions of APN Nos. 026-020-016 and 026-020-017, than any other similarly situated landowner located within the Delta Mendota Subbasin.

This covenant shall benefit the Districts, and each successive owner, during the ownership thereof, of the Option Property, and burden Stanislaus Properties, LLC, and each successor owner, during the ownership thereof, of the remaining portions of APN Nos. 026-20-016, and 026-020-017."

ii. "The Landowner's existing well located outside the Option Property has been degrading in capacity for some time due to normal wear and the Landowner shall retain the right to replace such well now or in the future, and shall have the right to install one additional well outside the Option Property for use on the Landowners remainder parcel and adjacent land. Provided however, the amount of well water used on Landowner's adjacent lands shall be limited to the annual amount of water used on those same lands as of the effective date of this Lease Agreement and Option to Purchase Real Property."

b. The Covenants shall be incorporated in the Grant Deed, and shall be recorded in the office of the County Recorder for the County of Stanislaus.

8.0 **Warranties.** The real property made subject to the option election by Districts is not subject to any warranties or representations being made by Landowner other than the following:

8.1 To the best of the knowledge of Landowner, there has been no discharge of any hazardous material, toxic material, or petroleum product upon the real property made subject to purchase by Districts.

9.0 **Arbitration.** The parties agree that if any dispute should arise under the terms and provisions of this agreement, each party waives any right to commence legal action or arbitration other than as provided under the terms of this agreement, and this agreement shall provide the sole and exclusive remedy for resolution of disputes.

9.1 The determination of the arbitrator will be final and binding upon each party and each party specifically waives any right to claim that the arbitrator has exceeded the scope of the arbitration, has disregarded evidence or principles of law, and further waives any right to disclaim the qualification or function of the arbitrator in any manner or fashion.

9.2 Appointment of the arbitrator shall be made by mutual agreement of the parties. If the parties cannot agree upon the identification of the arbitrator within thirty (30) days from the mailing of the notice of objection or dispute, a petition for appointment of arbitrator shall be filed with the superior court of the county of Stanislaus.

9.3 The arbitrator's fees and fees and costs of petitioning for the appointment



of the arbitrator shall be paid by one or both parties to the arbitrator in accordance with the determination of the arbitrator as to the fair apportionment of such fees and costs. The arbitrator upon rendering its award shall determine the party that prevailed based upon written statements made by each party at the commencement of the arbitration as to the position of the parties and their alternatives for settling the matter. A statement of a proposed settlement shall not be binding upon any party and shall not be considered as evidence by the arbitrator except to the extent that the arbitrator upon making its sole and independent determination shall determine the party which prevailed based upon the proposals for settlement of the matter made by each party and shall determine that the non-prevailing party shall pay some or all of the costs of arbitration including any costs incurred by the arbitrator and in employing experts to advise the arbitrator in regard to specific subjects or questions. The arbitrator may further award the cost of attorneys' fees or expert witnesses consulted or employed in the preparation or presentation of evidence to the arbitrator by the prevailing party if, in the arbitrator's determination, the position of the non-prevailing party was not reasonably taken or maintained or was based upon a failure to properly exchange or communicate information with the prevailing party in regard to the subject submitted to arbitration.

9.4 The arbitrator's determination may further provide for prospective enforcement and directions for the parties to comply with. Under such circumstances, the rulings of the arbitrator shall be binding upon the parties and shall be undertaken and performed by each of the parties until (a) such time as the arbitrator's directions to the party shall lapse by their terms, (b) the arbitrator shall notify the parties that those terms are no longer in force or effect, or (c) the arbitrator shall modify those terms.

10.0 **Prevailing Party Entitled to Attorney's Fees.** If it shall be necessary for either party hereto to commence legal action to enforce or interpret the terms or provisions of this Agreement or to compel arbitration or to enforce an Arbitrator's Award, the prevailing party shall be entitled to reasonable attorney's fees and costs incurred, including the reasonable costs of any consultants or experts employed in the preparation and/or presentation of any evidence in such proceedings. It shall not be a precondition of payment of such costs or expenses that the expert's or consultant's information or evidence shall have been presented in any such proceeding or a precondition that the services of the attorney or costs associated with those services shall have been incurred in any open Court proceeding. The costs of a prevailing party incurred in negotiations and discussions to settle a matter may be awarded by a Court or arbitrator as specified under the terms of this Agreement.

11.0 **Time is of the Essence.** Time is of the essence in the performance of this Agreement and of every term and provision thereof.

12.0 **No Other Terms.** There are no other terms, conditions, promises, or warranties either implied or explicit or promises other than are contained within the written terms of this Agreement.

13.0 **Binding Upon Heirs.** This Agreement and the obligations and benefits provided herein shall be binding upon the heirs, executors, legal representatives and successors of each of the respective parties hereto.

14.0 **Whole and Entire Agreement.** This Agreement contains the entire agreement between the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect. Subsequent modifications to this Agreement shall be in writing and signed by all parties.

15.0 **Specific Performance.** The parties agree that there is no adequate monetary remedy available in case of breach or default of obligations under this Agreement. Accordingly, the parties agree that specific performance shall be available to enforce any of the obligations under this Agreement and the defaulting or breaching party agrees to support and not contest any effort to obtain any order of specific performance of these obligations.

16.0 **No Waiver or Disclaimer.** A failure to utilize or to enforce any term or provision of this Agreement or any facility described in this Agreement shall not constitute a waiver or disclaimer of any interest or right under the terms of this Agreement.

17.0 **Parties to Act in Good Faith.** Each of the parties agrees to act in good faith to implement and to allow for the performance of the obligations and the rights specified herein, and each party agrees not to do any act which would impair or make more difficult or impossible the performance of this Agreement and of every right or term thereof.

18.0 **No Assignment.** The provisions of this Agreement shall apply to and bind the successors and assigns of the respective parties hereto, but no assignment or transfer of this Agreement or any part thereof or interest therein by any party shall be valid unless and until approved in writing by the other party.

19.0 **Covenant Running With the Land.** Each party on behalf of itself and its successors stipulates that the terms and provisions of this Lease constitute a covenant running

with the land and meet all of the requirements, conditions and terms of such an agreement. The terms and provisions of this Lease shall automatically cease to be a covenant upon the expiration or earlier termination of this Lease, and the parties shall cooperate as may be reasonably necessary to memorialize the cessation of the covenant in the event of the Lease's expiration or earlier termination

20.0 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

21.0 **Notices.** Any and all notices, demands or requests and other communications given to or delivered to either party hereto by the other party shall be in writing and shall be personally delivered, or mailed (via certified mail, return receipt requested) to the party at its address set forth below, which address may be changed from time to time by the parties by notice pursuant to the provisions hereof, and shall be deemed given upon receipt thereof.

22.0 **Memorandum of Lease and Option to Purchase Real Property Interest Agreement.** A Memorandum of this Lease and Option to Purchase Real Property Interest Agreement shall be executed and recorded in the form attached as Exhibit E to this Agreement.

23.0 **Indemnification.** Districts shall fully indemnify, hold harmless and defend Landowner and its members, directors, officers, employees, and agents (collectively, "Indemnified Parties") from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorneys' fees and costs), whether or not involving a third party claim, which arise out of, relate to or result from any act or omission of a District.

24.0 **Limitation of Liability.** To the fullest extent permitted by law, and notwithstanding any other provision of this Lease, the total liability, in the aggregate, of Landowner and Landowner's members, officers, employees, and agents, and any of them, to Districts and anyone claiming by or through Districts, for any and all claims, losses, costs or damages, including attorneys' fees and costs, in any way relating to this Lease shall not exceed the total compensation received by Landowner under this Lease.

25.0 **Insurance.** Districts shall each maintain the following insurance coverage with respect to the Leased Premises during the Lease term:

(a) Commercial General Liability Insurance covering operations by, or on behalf of, Districts on an occurrence basis against claims for bodily injury, property damage and personal injury liability with minimum limits of \$1,000,000 each occurrence; \$2,000,000 general aggregate; \$2,000,000 products and completed operations aggregate;

(b) Property insurance covering their equipment and interest in improvements and betterments on an "All Risk" basis including, where appropriate, the perils of flood and earthquake. Coverage shall be written with a replacement cost valuation and include an agreed value provision. The policy shall include a rental income extension.

(c) Worker's compensation coverage for employee of Districts as require by law and employer's liability insurance.

All policies shall be written with carriers approved to do business in the State of California with an A.M. Best rating of at least A-VII and shall contain a clause providing that carrier waives all rights of recovery under subrogation or otherwise against Landowner. The above insurance policies shall include provisions preventing cancellation or nonrenewal without

at least thirty days prior notice to Districts, and Districts shall forward such notice to Landowner within seven days of District's receipt of such notice. Districts shall provide Landowner certificates of insurance confirming renewal of the coverage at least fifteen days prior to expiration.

26.0 **Force Majeure.** Landowner shall not be liable for any failure of or delay in the performance of its obligations under this Agreement for the period that such failure or delay is beyond its reasonable control and could not reasonably have been foreseen. If the Leased Property is rendered unusable or unfit for Districts' purposes by casualty, this Lease will immediately terminate and no rent shall accrue from the date of such casualty.

27.0 **Joint and Several Obligations.** The District's rights under this Lease shall be joint and several. All obligations of the Districts under this Lease shall be joint and several. In the event any dispute arises between the Districts in relation to this Lease, the Districts shall indemnify, defend, and hold harmless Landowner from and against any claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorneys' fees and costs), suffered or incurred by Landowner in relation to such dispute.

28.0 **Maintenance.** Districts shall be solely responsible for operation, maintenance, repair and replacement of any facilities and equipment on the Lease Property. Landowner shall have no obligation to provide services in relation to the Leased Property.

29.0 **Holdover.** Districts shall become month-to-month tenants if Districts fail to vacate the Leased Property upon expiration or sooner termination of this Lease without exercising their option to purchase.

30.0 **Right of Entry.** Landowner reserves the right to enter upon the Leased Property at any and all times for the purposes of inspecting the Leased Property to determine whether Lessee is complying with the terms of this Lease and for the purpose of doing any other lawful act that may be necessary to protect Landowner's interest.

31.0 **Compliance with Laws.** Districts shall comply, at their sole expense, with any and all applicable laws, regulations and requirements of any public authority, including those regarding maintenance, operation, and use of the Leased Property and equipment on the Leased Property including, without limitation, the Americans with Disabilities Act and any other act, law or regulation pertaining to persons with disabilities.

32.0 **Hazardous Substances.** Districts agree that they shall not cause or permit any Hazardous Substances to be placed, held, generated, handled, transported, located, stored, or disposed of in, on, about or at the Leased Property. As used in this Lease the term "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Leased Property. Hazardous Material includes, without limitation: (a) any "hazardous substance", as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code Sections 9601-9675); (b) "hazardous waste", as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code Sections 6901-6992k); (c) any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct

concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect); (d) petroleum products; (e) radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code Sections 2011-2297; (f) asbestos in any form or condition; and (g) polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

IN WITNESS WHEREOF, the parties to the Agreement have executed this Agreement in their authorized capacities as indicated below.

**DISTRICTS**

Dated: DEL PUERTO WATER DISTRICT:  
By: Ivan E. Bays  
Ivan E. Bays, President  
By: Anthea G. Hansen  
Anthea G. Hansen, General Manager/Secretary

Dated: CENTRAL CALIFORNIA IRRIGATION DISTRICT:  
By: James O'Banion  
James O'Banion, President  
By: Marianne Martin  
Marianne Martin, Secretary

**LANDOWNER**

Dated: STANISLAUS PROPERTIES, LLC  
By: Walter R. Curtner  
Walter R. Curtner, Sole Member

87



EXHIBIT "A"

Legal Description describing Landowner's real property on the North side of Orestimba Road, Stanislaus County, California, APN No. 026-020-016 and 026-020-017, approximately 320 gross acres

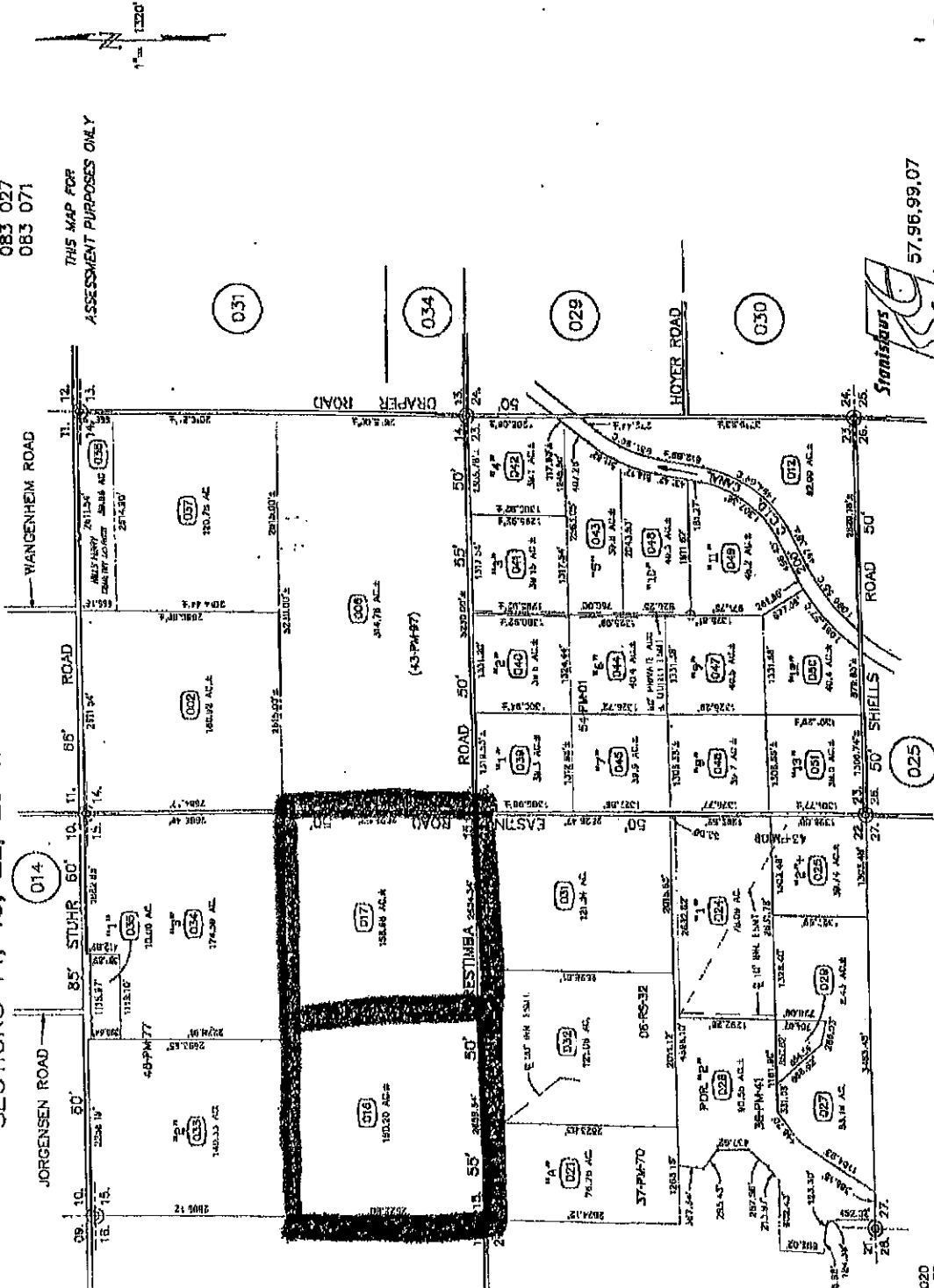
The following described real property in the County of Stanislaus: the South East & South West quarter sections of Section 15, Township 7 South, Range 8 East, Mount Diablo Base and Meridian.

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083 027  
083 071

THIS MAP FOR ASSESSMENT PURPOSES ONLY

SECTIONS 14, 15, 22, 23 T.7S. R.8E. M.D.B.& M.



Stanislaus County Assessor 57,96,99.07

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rights reserved

**EXHIBIT B**

**Easement and License Agreement 2014**

## EASEMENT AND LICENSE AGREEMENT

THIS EASEMENT AND LICENSE AGREEMENT, made and entered into this 19th day November, 2014, by and between DEL PUERTO WATER DISTRICT, a political subdivision of the state of California, hereinafter called "DPWD", CENTRAL CALIFORNIA IRRIGATION DISTRICT, a political subdivision of the state of California, hereinafter called "CCID", and STANISLAUS PROPERTIES, LLC, a Colorado Limited Liability Company, hereinafter called "Landowner".

### RECITALS

A. DPWD and CCID desire that Landowner allow DPWD and CCID to construct and measure two one-acre recharge ponds and two monitor wells that will facilitate understanding the aquifer below and above the Corcoran Clay near Orestimba Creek at Landowner's property. Such recharge ponds and monitor wells shall be located on property owned by landowner and outside of DPWD's and CCID's rights of ways.

B. Landowner, DPWD and CCID desire by this agreement to grant to DPWD and CCID an easement to construct DPWD and CCID owned ponds and monitor well facilities on Landowner's property, and to protect the ownership by DPWD and CCID of such ponds and monitor well facilities that are located outside of DPWD's and CCID's rights of ways on Landowner's property without being precise about the location of such facilities with respect to property lines.

### AGREEMENT

NOW, THEREFORE, in recognition of the mutual promises, conditions and covenants set forth herein, the parties agree as follows:

1. The above recitals are true.
0. Term: This Agreement will take effect upon execution and will remain in effect for the monitor wells until dissolved by either party hereto by the giving of 90 days written notice, which notice regarding the access to and use of the monitor wells shall not be given prior to December 31, 2015 in order to allow monitoring of the performance and results of the recharge ponds. The easement and license granted in regard to the recharge ponds shall remain in effect until December 31, 2015 and thereafter will remain in effect, unless dissolved or terminated by either party hereto by giving 90 days notice, or unless mutually extended.
1. Subject Property, Ownership: The address of the property that is the subject matter of this Agreement is approximately north side of Orestimba Road, Stanislaus County; more specifically the southwest  $\frac{1}{4}$  and the southeast  $\frac{1}{4}$  of Section 15, Township 07 South, Range 08 North MDB&M commonly known as APN's 026-020-016 and 026-020-017 respectively. The legal description for the real property is included as Exhibit A hereof and incorporated herein as if set forth in full. Additionally, the Vicinity Map and Recharge Pond Layout are shown on Exhibit B dated October 16, 2014 and Exhibit C respectively.

Landowner represents and warrants that Landowner has full and unrestricted authority to enter into this Agreement on behalf of all persons having any legal or beneficial interests in the property.

2. Monitor Well Ownership: Landowner grants to DPWD and CCID an easement and license to construct, maintain, and measure DPWD and CCID owned monitor well facilities on Landowner's property, located near the northeast and southwest corners of the parcels described in Paragraph 3, to facilitate understanding of the aquifer at Orestimba Creek. Landowner further agrees that any and all monitor well facilities constructed by DPWD and CCID on Landowner's property shall be owned by DPWD and CCID except that if Landowner gives notice to terminate the use of the monitor well facilities, DPWD and CCID shall provide for their closure and return the land surface to its condition prior to installation of those monitor well facilities.
3. Recharge Test Pond Lease and Ownership: Landowner grants to DPWD and CCID an easement and license to construct, maintain, and measure DPWD and CCID leased recharge test pond facilities on Landowner's property, located near the northeast and northwest corners of the parcels described in Paragraph 3 shown on Exhibit B, to facilitate understanding of the aquifer at Orestimba Creek. DPWD and CCID further agree that any and all recharge test pond facilities constructed by DPWD and CCID on Landowner's property shall be owned by Landowner and will be the responsibility of DPWD and CCID until Landowner shall give notice of lease termination and the lapse of 90 days thereafter at which time the recharge ponds shall be the responsibility of Landowner unless Landowner shall have elected to have the land returned to its condition prior to the construction of the recharge ponds in which case DPWD and CCID will provide for their removal and the return of the land surface to its pre project condition. Upon removal of the recharge ponds and return of the land surface to its leveled condition prior to the construction of the recharge ponds, DPWD and CCID shall not have responsibility for treating or adding soil amendments to the soil within the recharge pond construction area as a part of returning the land to its prior level. Upon returning the land to a level condition Landowner shall be responsible for any liability or claim arising from that area of or the condition of Landowner's real property upon termination of the easement and license except that DPWD and CCID shall continue to be responsible for any claims, damages or liability arising from or related to the use of or the condition of the recharge ponds during the term of their existence and use prior to voluntary termination of the license and easement by DPWD and CCID or upon the date 90 days following notice from Landowner of election to terminate the easement and license rights whether those claims shall be asserted during that term of use or thereafter.
4. Right of Access: Landowner shall allow DPWD and CCID access across Landowner's property on existing roadways in order to construct, maintain, and measure DPWD's and CCID's monitor well and recharge pond facilities. Landowner and tenant shall be notified prior to start up of any recharge test and upon completion of any recharge test.
5. Termination: In the event that this agreement is terminated, DPWD and CCID shall have the option, at DPWD's and CCID's discretion, to remove the monitor well and recharge pond facilities and restore the ground to pre-project conditions or to abandon them in place if Landowner requests that recharge pond facilities not be removed. In the event that

DPWD and CCID exercise their option to abandon the wells and recharge pond facilities, they shall become the property of Landowner.

6. Miscellaneous: This Agreement constitutes the entire agreement of the parties hereto and shall be binding upon their heirs, successors and assigns.

8.1 Indemnification and Defense: DPWD and CCID shall indemnify and save Landowner harmless from any and all liability, costs or claims arising out of, connected with or resulting from the construction, maintenance, and measurement by DPWD and CCID of DPWD's and CCID's monitor well and the recharge pond facilities located on Landowner's property. The duty to indemnify and defend shall be enforceable whether those claims and costs are incurred during the term of the easement and license or shall be asserted or incurred after the termination of the license and easement provided the claims arise from or relate to acts or omissions relating to those facilities by DPWD and/or CCID during the exercise of their rights under the easement and license agreement. This duty to indemnify and defend Landowner and its employees and agents includes any and all reasonable costs and expenses of defense including attorney fees and expert witness costs.

8.2 Any modification of this Agreement must be in writing, signed by DPWD, CCID and Landowner.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

DEL PUERTO WATER DISTRICT

STANISLAUS PROPERTIES, LLC

By: Ivan E. Bays  
Ivan E. Bays, President

By: Walter R. Curtaer  
Walter R. Curtaer

By: Anthea G. Hansen  
Anthea G. Hansen, General Manager/Secretary

CENTRAL CALIFORNIA  
IRRIGATION DISTRICT

By: James O'Banion  
James O'Banion, President

By: Gregg Rice  
Gregg Rice, Secretary

23

EXHIBIT "A"

Legal Description describing Landowner's real property on the North side of Orestimba Road, Stanislaus County, California, APN No. 026-020-016 and 026-020-017, approximately 320 gross acres

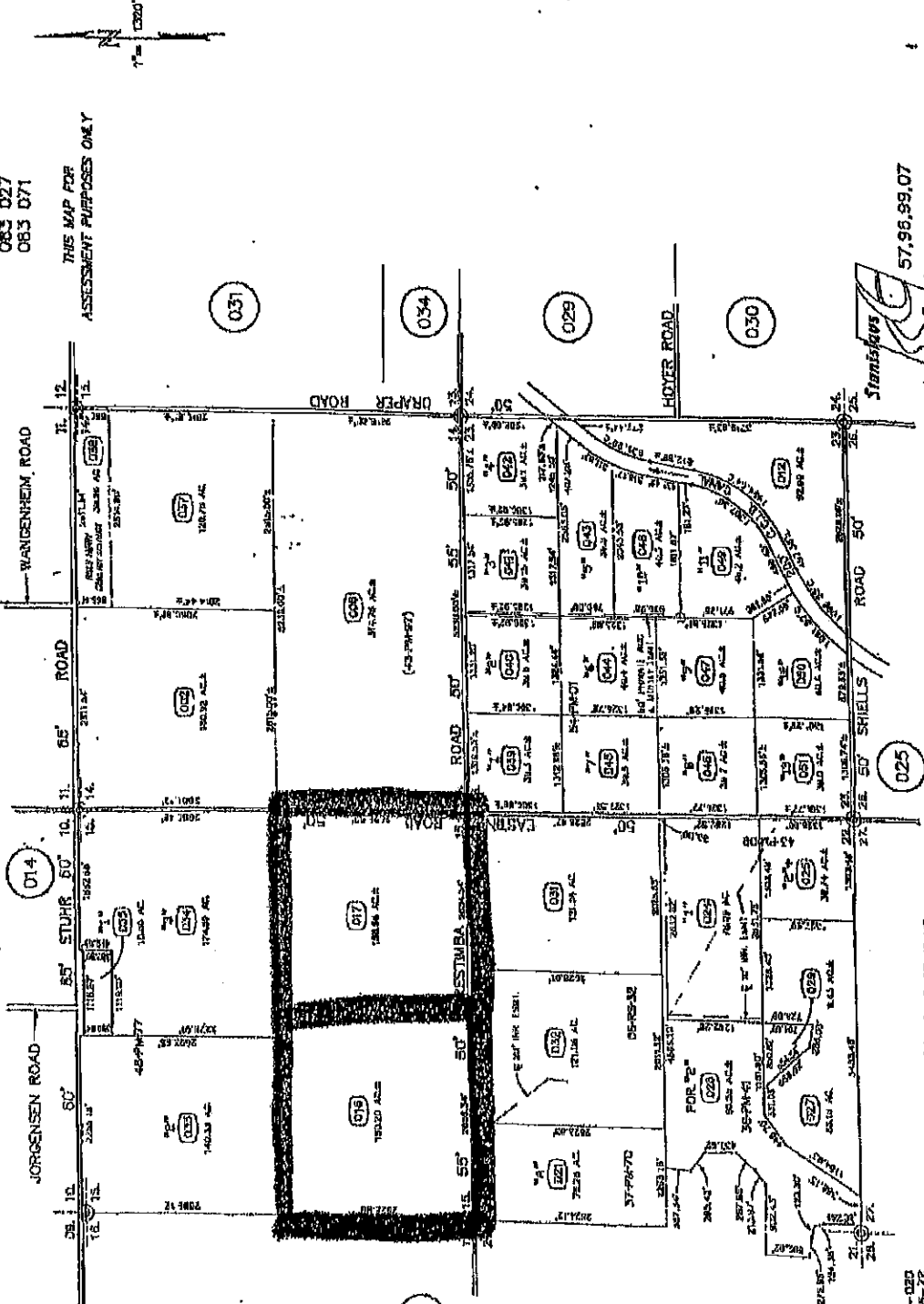
The following described real property in the County of Stanislaus: the South East & South West quarter sections of Section 15, Township 7 South, Range 8 East, Mount Diablo Base and Meridian.

026 - 020

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083 071

THE MAP FOR ASSESSMENT PURPOSES ONLY

SECTIONS 14, 15, 22, 23 T.7S. R.8E. M.D.B. & M.

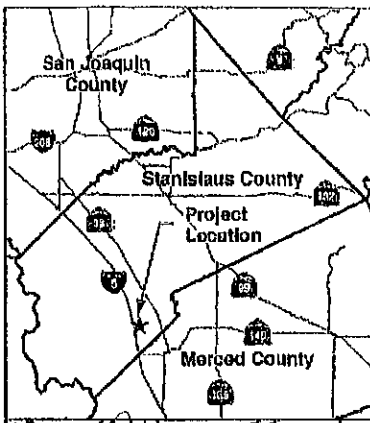
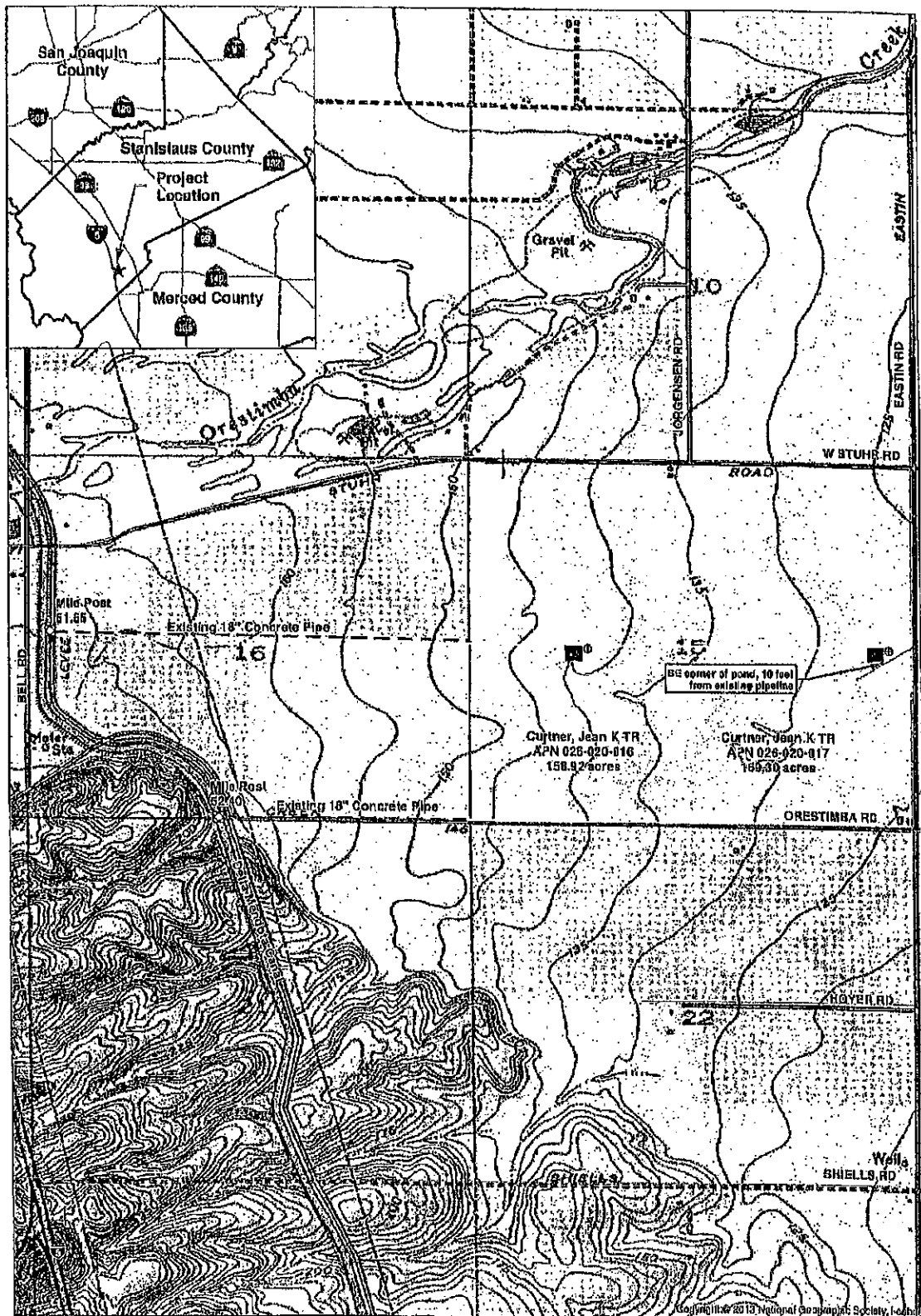


Stanislaus County Assessor  
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026 - 020

26-020  
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-30-56, 71-72-68, 3-2-80, 12-29-05(N) MP. 03-23-11 MB

All rights reserved

24



0 500 1,000 Feet

**PROVOST & PRITCHARD**  
 CONSULTING GROUP  
 20000 Old River Road  
 San Francisco, CA 94134

- Delta-Monodia Turnout
- Monitor Well
- 18" Existing Concrete Pipeline
- Proposed 1 Acre Test Ponds

Township 07 S, Range 00E  
 USGS Newnam Quad

**Orestimba Creek Recharge & Recovery Pilot Project**

Potential Recharge Sites (Topo)

San Joaquin River Exchange Contractors Water Authority and Del Puerto Water District

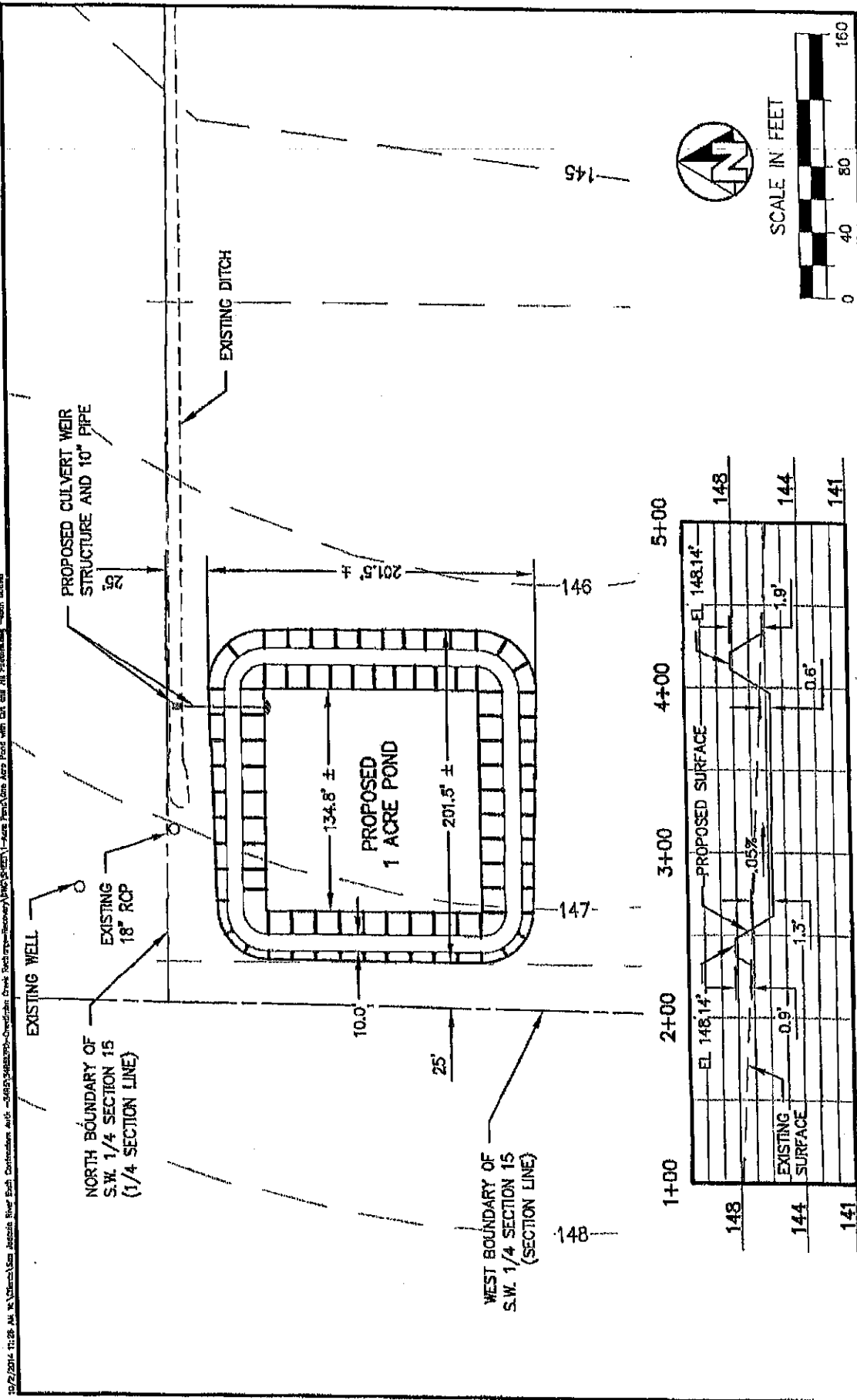
Revised Exhibit B  
 (10/16/2014)

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Handwritten signature or initials.



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SCALE IN FEET



DESIGN ENGINEER:  
RICK IGER  
DATE: 09/23/2014  
JOB NO: 349513B2

ORESTIMBA CREEK RECHARGE AND RECOVERY PILOT PROJECT  
RECHARGE POND LAYOUT  
SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY  
DEL PUERTO WATER DISTRICT

EST. 1918  
**PROVOST & PRITCHARD**  
CONSULTING GROUP  
An Employee Owned Company

ONE ACRE POND

**EXHIBIT C**

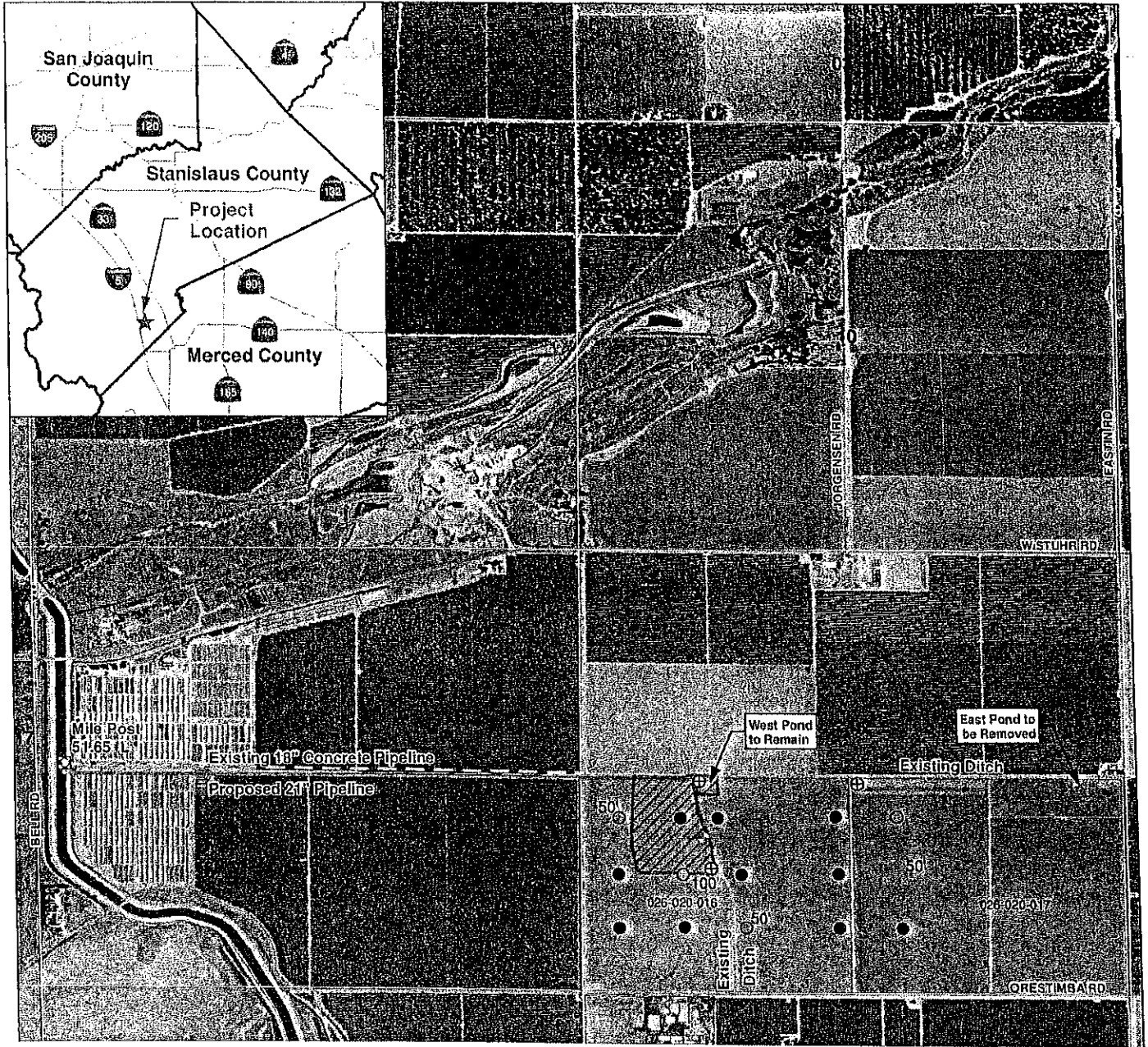
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**EXHIBIT C**

**Leased Premises**

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Exhibit C

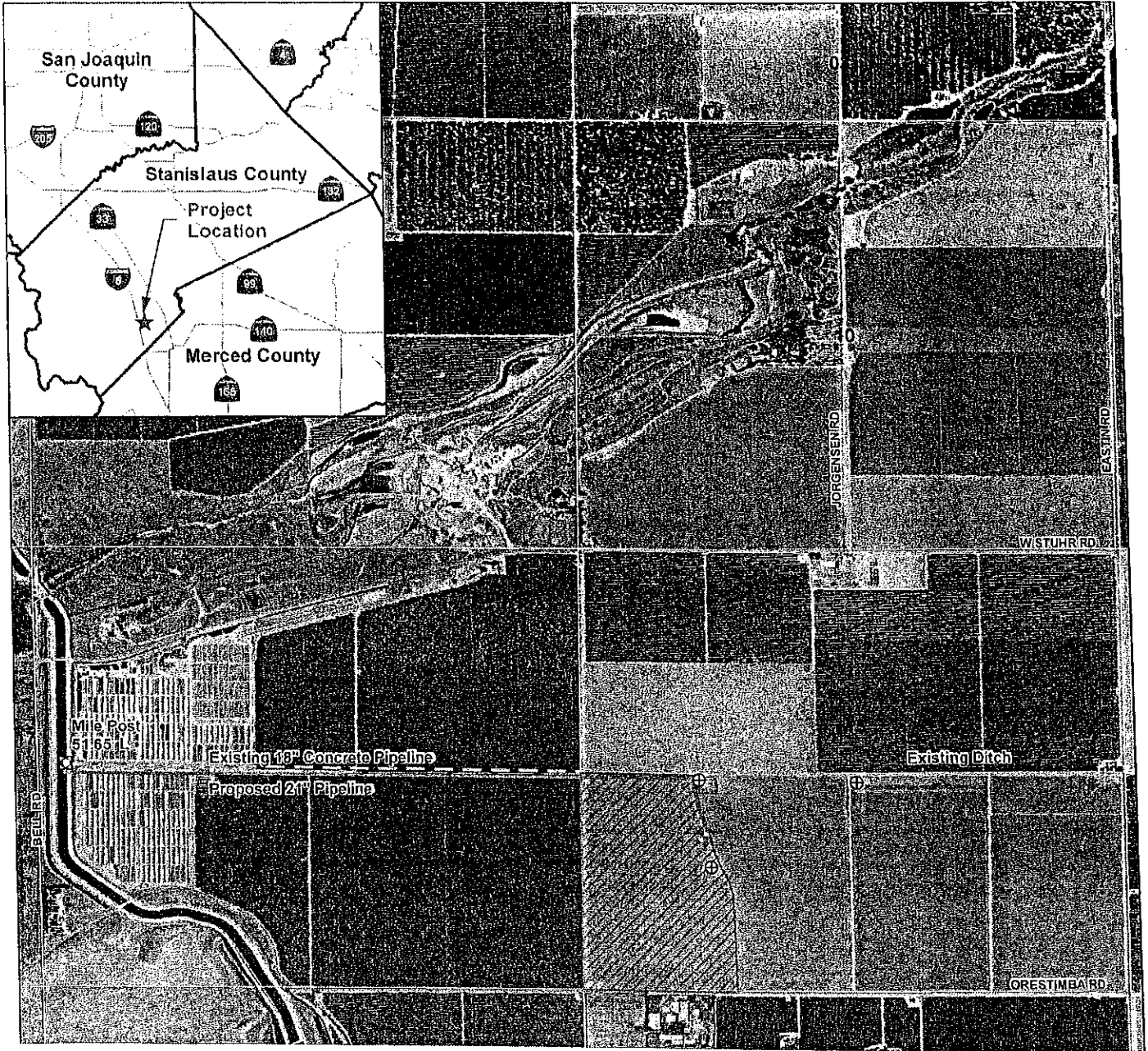


**Exhibit D**

**80-Acre Option Purchase**

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Exhibit D





**Exhibit E**

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RECORDING REQUEST BY:  
Del Puerto Water District

WHEN RECORDED RETURN TO:

DEL PUERTO WATER DISTRICT  
17840 Ward Avenue  
P.O. Box 1596  
Patterson, CA 95363-1596

REC'T # 0004077333  
January 25, 2018 12:42:46

Stanislaus County Recorder  
Lee Lundrigan Co Recorder Office

MEMORANDUM OF LEASE AGREEMENT AND OPTION TO INTEREST

Official # 18-0004994-00

Stanislaus Properties, LLC, (hereinafter referred to as "Landowner") and Central California Irrigation District (hereinafter referred to as "District") as of January 1, 2017 entitled "Lease Agreement and Option to Purchase" (hereinafter referred to as the "Agreement") and as a result the parties agree to the following:

REQD BY  
Free Issue  
Total fee ..... \$0.00  
Amount Tendered... \$0.00  
Change ..... \$0.00  
AKN, R2/2/6

1. The real property which is the subject of the Agreement is described in the attached Site Legal Description, which by this reference is incorporated herein by reference as though set forth in full. ("Site").

2. The Agreement provides that for valuable consideration, the Landowner, referred to in the Agreement as the "Leased Premises", has granted to the District, for the purpose of constructing, maintaining, operating and recharging to groundwater which may be conducted upon the Site through the construction, operation and manipulation of recharge pond facilities. The terms of the Agreement are incorporated herein by reference as though set forth in full. All of the covenants, promises and agreements contained herein are subject to all of the terms and conditions stated in the Agreement, the original of which is a public record and is on file at the DISTRICT office at the address given above.

3. The Agreement further provides that Landowner grants to Districts, jointly and severally, the option and right to elect to purchase 80 acres, consisting of the Leased Premises of 20 acres plus an additional contiguous 60 acres, as shown in Exhibit D of the Agreement. The 80 acres is referred to in the Agreement as the "Option Property".

This Memorandum shall be binding upon the parties hereto and upon the successors in interest to the parties.

"DISTRICTS"

Del Puerto Water District

BY: Anthea G. Hansen \*

BY: Ivan E. Bays \*\*  
President

Central California Irrigation District

BY: James O'Banion

BY: Marianne Martin  
Marianne Martin, Secretary

"LANDOWNER"

Stanislaus Properties, LLC

BY: Walter R. Curtner \*\*\*  
Managing Partner

\* Anthea G. Hansen  
\*\* Ivan E. Bays  
\*\*\* Walter R. Curtner

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of COLORADO  
County of ARAPAHOE

On NOV. 29, 2017 before me, MARIA SOCORRO LERNER, Notary Public, personally appeared WALTER R. CURTNER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies). And that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of COLORADO that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature *Maria Socorro Lerner* (Seal)

MARIA SOCORRO LERNER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20034016110  
MY COMMISSION EXPIRES MAY 15, 2019

OPTIONAL

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER(S)

TITLES

- PARTNER(S)
- LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

Signer(s) is/are representing:  
\_\_\_\_\_

DESCRIPTION OF ATTACHED DOCUMENT

DOCUMENT NAME

Number of pages

[DATE OF DOCUMENT]

SIGNERS OTHER THAN ABOVE

103

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

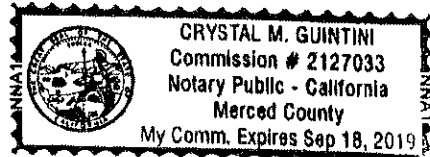
State of California  
County of Merced

On 12/7/2017 before me, Crystal M. Guintini, Notary Public  
(insert name and title of the officer)

personally appeared Anthea G. Hansen  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Crystal M. Guintini (Seal)

**ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Merced

On 12/12/2017 before me, Crystal M. Guintini, Notary Public  
(inset name and title of the officer)

personally appeared James O'Banion, Board President, and Marianne Martin, Secretary-Controller who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledge to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and current.

WITNESS my hand and official seal.

Signature Crystal M. Guintini (SEAL)



105



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

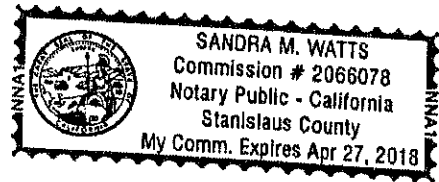
County of Stanislaus

On 12/18/17 before me, Sandra M. Watts, Notary Public, personally appeared Ivan E. Bays, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature Sandra M. Watts (Seal)



104

**SITE LEGAL DESCRIPTION**

**APN 026-020-016**

**THE FOLLOWING DESCRIBED REAL PROPERTY IN STANISLAUS COUNTY:  
the South West ¼ Section of Section 15, Township 7 South, Range 8 East Mount Diablo Base  
and Meridian**

**APN 026-020-017**

**THE FOLLOWING DESCRIBED REAL PROPERTY IN STANISLAUS COUNTY:  
the South East ¼ Section of Section 15, Township 7 South, Range 8 East Mount Diablo Base  
and Meridian**

101