

V.A.

Anthea Hansen

From: Madriz, Enit@DWR <Enit.Madriz@water.ca.gov>
Sent: Tuesday, November 28, 2023 4:22 PM
To: Anthea Hansen; Emerson, Rain L
Cc: DWR SWP Settlement
Subject: RE: [EXTERNAL] RE: Oak Flat & Del Puerto Exchange Agreement
Attachments: Amendment_OakFlat_DelPuerto_20231121.docx

Hello Anthea and Rain,

Attached is the draft Amendment to the Oak Flat & Del Puerto Exchange Agreement #21301. This Amendment will affect the existing agreement as follows:

- **Paragraph 1)** Extending the term to 2035
- **Paragraph 7)** Adding Shiraz turnout as an additional point of delivery. Delivery shall be based on a schedule submitted by DPWD.
- **Paragraph 11)** Coordinating between DPWD and DWR for the water delivery to designated turnouts in Reach 2A, while Reclamation coordinates CVP Water delivery to DWR at O'Neill Forebay.
- **Paragraph 12)** Reclamation and DPWD coordinate annual water delivery schedules, and DPWD submits agreed-upon schedules to DWR, with coordination between DWR and Reclamation for water delivery to designated turnouts.
- **Paragraph 18)** DWR covers transportation costs for delivering water to Reach 2A.
- **Paragraph 23)** DWR is relieved from its obligation to deliver water if uncontrollable forces prevent it, such as earthquakes, fires, tornadoes, floods, and other natural or human caused disasters.

Please review the Amendment in its entirety and do not hesitate to reply to: SWP_Settlement@water.ca.gov, if you have any questions or would like to set up a meeting to discuss. We look forward to your feedback and appreciate the continued cooperation as we move forward.

Regards,

Enit Madriz

From: Azar, Mandana@DWR <Mandana.Azar@water.ca.gov>
Sent: Thursday, November 2, 2023 2:08 PM
To: Anthea Hansen <ahansen@delpuertowd.org>; Emerson, Rain L <remerson@usbr.gov>
Cc: Luzuriaga, Patrick@DWR <Patrick.Luzuriaga@water.ca.gov>; Chu, Andy@DWR <Andy.Chu@water.ca.gov>; Zamanian, Arian@DWR <Arian.Zamanian@water.ca.gov>; DWR SWP Settlement <SWP_Settlement@water.ca.gov>
Subject: RE: [EXTERNAL] RE: Oak Flat & Del Puerto Exchange Agreement

Hi Anthea,

The draft agreement is with our legal. We will share it with you as soon as we have it back. Thank you for your patience.

Kindly,

Donna Azar

From: Anthea Hansen <ahansen@delpuertowd.org>
Sent: Thursday, November 2, 2023 12:26 PM
To: Emerson, Rain L <remerson@usbr.gov>; Azar, Mandana@DWR <Mandana.Azar@water.ca.gov>
Cc: Luzuriaga, Patrick@DWR <Patrick.Luzuriaga@water.ca.gov>; Chu, Andy@DWR <Andy.Chu@water.ca.gov>; Zamanian, Arian@DWR <Arian.Zamanian@water.ca.gov>; DWR SWP Settlement <SWP_Settlement@water.ca.gov>
Subject: RE: [EXTERNAL] RE: Oak Flat & Del Puerto Exchange Agreement

Hi Rain,

I never saw the draft come through. Can someone send it to me?

Sincerely,
Anthea

Anthea G. Hansen

General Manager

Del Puerto Water District

PH 209-892-4470/FAX 209-892-4469

From: Emerson, Rain L <remerson@usbr.gov>
Sent: Thursday, November 2, 2023 12:15 PM
To: Anthea Hansen <ahansen@delpuertowd.org>; Azar, Mandana@DWR <Mandana.Azar@water.ca.gov>
Cc: Luzuriaga, Patrick@DWR <Patrick.Luzuriaga@water.ca.gov>; Chu, Andy@DWR <Andy.Chu@water.ca.gov>; Zamanian, Arian@DWR <Arian.Zamanian@water.ca.gov>; DWR SWP Settlement <SWP_Settlement@water.ca.gov>
Subject: Re: [EXTERNAL] RE: Oak Flat & Del Puerto Exchange Agreement

Anthea,

Reclamation is reviewing the revised contract. I do not have timing at this moment on our collective response but will work to get one.

Rain L. Emerson, M.S.
Contracts Administration Branch Chief
Bureau of Reclamation
Interior Region 10 - California-Great Basin
South-Central California Area Office
Work Ph: 559-262-0350
Cell Ph: 559-353-4032

From: Anthea Hansen <ahansen@delpuertowd.org>
Sent: Thursday, November 2, 2023 12:06 PM
To: Azar, Mandana@DWR <Mandana.Azar@water.ca.gov>; Emerson, Rain L <remerson@usbr.gov>

Cc: Luzuriaga, Patrick@DWR <Patrick.Luzuriaga@water.ca.gov>; Chu, Andy@DWR <Andy.Chu@water.ca.gov>; Zamanian, Arian@DWR <Arian.Zamanian@water.ca.gov>; DWR SWP Settlement <SWP_Settlement@water.ca.gov>
Subject: [EXTERNAL] RE: Oak Flat & Del Puerto Exchange Agreement

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello,

What is the timing of the draft agreement?

Sincerely,
Anthea

Anthea G. Hansen

General Manager

Del Puerto Water District

PH 209-892-4470/FAX 209-892-4469

From: Azar, Mandana@DWR <Mandana.Azar@water.ca.gov>

Sent: Thursday, October 19, 2023 3:35 PM

To: Emerson, Rain L <remerson@usbr.gov>

Cc: Anthea Hansen <ahansen@delpuertowd.org>; Luzuriaga, Patrick@DWR <Patrick.Luzuriaga@water.ca.gov>; Chu, Andy@DWR <Andy.Chu@water.ca.gov>; Zamanian, Arian@DWR <Arian.Zamanian@water.ca.gov>; DWR SWP Settlement <SWP_Settlement@water.ca.gov>

Subject: Oak Flat & Del Puerto Exchange Agreement

Hi Rain,

Today, DWR staff met with Anthea Hansen and discussed about amending the existing exchange agreement 21301 (attached). The amendment will affect the existing agreement in:
Article 1 by extending the term to 2035, and
Article 7 by adding Shiraz turnout as an additional point of delivery.

Time extension to 2035 is consistent with long term CPOU, Initial Study/Negative Declaration (IS/ND) and US Bureau of Reclamation's Environmental Assessment. DWR is pursuing to file an addendum to IS/ND to add Shiraz as an additional point of delivery. Within a week DWR will share a draft of the amended agreement with the parties for review and comment.

Please do not hesitate to reach out SWP Settlement at SWP_Settlement@water.ca.gov, should you have any questions.

Best Regards,

Donna Azar, PE
Senior Engineer, Water Resources

Settlement Contracts & Project Exchanges Unit
SWP Administration & Integration Branch
Division of Operations and Maintenance
Department of Water Resources
1516 9th Street, 2nd Floor
Sacramento, CA 95814

Office: (916) 902-9866
mandana.Azar@water.ca.gov

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V. A .

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

AMENDMENT NO. 1
TO THE AGREEMENT AMONG
THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF CALIFORNIA,
THE UNITED STATES DEPARTMENT
OF THE INTERIOR BUREAU OF RECLAMATION,
DEL PUERTO WATER DISTRICT, AND
OAK FLAT WATER DISTRICT

SWPAO #21301-A

THIS AMENDMENT is made and entered into this ____ day of _____, 20____,
by and among the Department of Water Resources of the State of California, hereinafter
referred to as "DWR", The United States Department of the Interior Bureau of
Reclamation, hereinafter referred to as "Reclamation", Del Puerto Water District
hereinafter referred to as "DPWD" and Oak Flat Water District, hereinafter referred to as
"OFWD." DWR, Reclamation, DPWD and OFWD may be referred to herein individually
as "Party," or collectively as "Parties."

RECITALS

WHEREAS, DWR, Reclamation, DPWD and OFWD entered into Agreement SWPAO
#21301, dated August 16, 2021, which provides for the delivery by DWR of State Water
Project (SWP) water to DPWD through OFWD using SWP facilities in exchange for
Reclamation making an equivalent amount of Central Valley Project (CVP) water
available to DWR at O'Neill Forebay. SWPAO #21301 is to remain in effect for five
years after the execution.

WHEREAS, DWR and DPWD entered into an "Agreement for Construction, Operation
and Maintenance of the Shiraz Ranch Turnout, a Permanent Turnout within the
California Aqueduct Right-of-Way" (SWPAO #19600), dated February 10, 2020,

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providing the terms and conditions for the construction and operation of a permanent Shiraz Ranch Turnout at approximately Milepost 49.52R, in Repayment Reach 2A of the California Aqueduct.

WHEREAS, the Parties desire to amend SWPAO #21301 to: (1) extend the term of the agreement until February 28, 2035, and (2) include the Shiraz Ranch Turnout as an additional point of delivery of SWP water to DPWD.

WHEREAS, DWR, as the lead agency under the California Environmental Quality Act (CEQA), adopted an Initial Study/Negative Declaration (IS/ND) for the "North of O'Neill Forebay Long-Term Exchanges Between DWR and USBR" and filed a Notice of Determination on March 18, 2020 (SCH #2020019024). Subsequently, DWR prepared an Addendum to the IS/ND to add the Shiraz Ranch Turnout as an additional point of delivery of SWP water to DPWD. DWR will file a NOD with the State Clearinghouse after the execution of this Amendment.

WHEREAS, Reclamation, as a facilitator of the exchange for DPWD, completed an Environmental Assessment (EA) 15-009, dated May 2015, for the "North of O'Neill Long-term Exchange Agreements," and EA 16-043, dated May 2017, for "Oak Flat Water District and Del Puerto Water District Long-Term Water Exchange," both of which EAs resulted in a Finding of No Significant Impact (FONSI) under the National Environmental Policy Act (NEPA). EA-15-009 and EA-16-043 covered the project period through 2030. Subsequently, Reclamation completed EA 2022-022, dated April 2022, and adopted a FONSI for "North of O'Neill Long-Term Exchange Agreements Extension to 2035."

WHEREAS, the State Water Resources Control Board (SWRCB), on December 30, 2020, approved a petition for a long-term consolidation of SWP and CVP places of use allowing the water exchange under SWPAO #21301. The proposed extension of the term of SWPAO #21301 until 2035 and the addition of the Shiraz Ranch Turnout as a point of delivery of SWP water to DPWD are within the scope of the SWRCB's December 30, 2020 approval.

AGREEMENT

Agreement SWPAO #21301 is hereby amended as follows:

1. Paragraph 1 is revised to read as follows:

This Agreement shall become effective upon execution by all Parties and shall terminate on February 28, 2035, or upon final payment to DWR by DPWD and OFWD of all costs attributable to this Agreement, whichever occurs later. However, the liability, hold harmless and indemnification obligations in this Agreement shall remain in effect until the expiration of the applicable statute of limitations, or until any claim or litigation concerning this Agreement asserted to DWR, Reclamation, DPWD, or OFWD within the applicable statute of limitations is finally resolved, whichever occurs later.

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2. Paragraph 7 is revised to read as follows:

DWR will deliver up to 3,966 acre-feet of SWP Water to DPWD at OFWD's turnout(s) and/or the DPWD's Shiraz Ranch Turnout in Reach 2A of the California Aqueduct, based on a schedule submitted by DPWD under Paragraphs 10-15 of this Agreement.

3. Paragraph 11 is revised to read as follows:

In coordination with Reclamation and OFWD, DPWD will be responsible for scheduling with DWR the delivery of water under this Agreement to the designated turnouts in Reach 2A of the California Aqueduct. Reclamation will be responsible for coordinating with DWR to determine the times and availability for delivery of CVP Water to DWR at O'Neill Forebay.

4. Paragraph 12 is revised to read as follows:

Reclamation and DPWD shall coordinate and agree in writing on an annual water delivery schedule showing monthly water deliveries under this Agreement. DPWD and OFWD shall coordinate and agree upon monthly water delivery schedule(s) before DPWD submits the monthly water delivery schedule(s) to Reclamation. DPWD will submit the agreed upon delivery schedule to DWR annually at SWP-SWDS@water.ca.gov. DWR and Reclamation shall coordinate on the annual schedule before DWR delivers any water to the designated turnouts under this Agreement.

5. Paragraph 18 is revised to read as follows:

DWR is responsible for the transportation cost associated with the delivery of SWP Water and any additional water needed to account for loss to the designated turnouts in Reach 2A of the California Aqueduct.

6. Paragraph 23 is revised to read as follows:

If uncontrollable forces preclude DWR from delivering water to the designated turnouts under this Agreement, either partially or completely, then DWR is relieved from its obligation to deliver the water to the extent that DWR is reasonably unable to complete the obligation due to the uncontrollable forces. Uncontrollable forces shall include, but are not limited to earthquakes, fires, tornadoes, floods, and other natural or human caused disasters.

All other provisions of SWPAO #21301 remain in effect.

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives, have executed this Amendment, which Amendment shall become effective on the date set forth above.

Approved as to Legal Form and
Sufficiency

STATE OF CALIFORNIA
DEPARTMENT OF WATER
RESOURCES

General Counsel
Department of Water Resources

Ted Craddock
Deputy Director

Date

Date

DEPARTMENT OF THE INTERIOR
U.S. BUREAU OF RECLAMATION

DEL PUERTO WATER DISTRICT

Name

Name

Title

Title

Date

Date

OAK FLAT WATER DISTRICT

Name

Title

Date

14

V.A.

USBR Contract Number 21-WC-20-5779

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

AGREEMENT AMONG
THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF CALIFORNIA,
THE UNITED STATES DEPARTMENT OF
THE INTERIOR BUREAU OF RECLAMATION,
DEL PUERTO WATER DISTRICT, AND,
OAK FLAT WATER DISTRICT

SWPAO #21301

THIS AGREEMENT is made this 16th day of August, 2021, pursuant to the provisions of the California Water Resources Development Bond Act and other applicable laws of the State of California, and the Reclamation Act of June 17, 1902 (32 Stat. 388), as amended, and supplemented, Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1187), and Section 305 of the Reclamation States Emergency Drought Relief Act of 1991 enacted March 5, 1992 (106 Stat. 59), as amended, and pursuant to the California Central Valley Project Act [Part 3, Division 6 (commencing at Section 11100) of the California Water Code], the California Water Resources Development Bond Act [Chapter 8, Part 6, Division 6 (commencing at Section 12930) of the California Water Code]. The Agreement is among the Department of Water Resources of the State of California, herein referred to as "DWR," the United States Department of the Interior Bureau of Reclamation, herein referred to as "Reclamation," Del Puerto Water District, herein referred to as "DPWD," and Oak Flat Water District, herein referred to as "OFWD." DWR, Reclamation, DPWD and OFWD may be referred to herein individually by name, as "Party," or collectively as "Parties."

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RECITALS

- A. OFWD is a California water district with authority under California law to enter into water supply contracts with DWR. DWR and OFWD have entered into a water supply contract, executed on March 23, 1965, and subsequently amended, providing that DWR shall supply certain quantities of water to OFWD, providing that OFWD shall make certain payments to DWR, and setting forth the terms and conditions of such payment (hereinafter the "OFWD Water Supply Contract").
- B. DPWD is a California water district which has a contract with Reclamation for a Central Valley Project (CVP) water supply under contract number 14-06-200-922-LTR1-P, effective October 1, 2020, with an indefinite term, herein referred to as "LTR1-P Contract". Reclamation is entering into this Agreement to facilitate the operational exchange of DPWD's CVP water supplies (CVP Water) for OFWD's State Water Project (SWP) Water Supplies (SWP Water).
- C. OFWD and DPWD are neighboring water districts located north of San Luis Reservoir with several common landowners.
- D. DPWD requested DWR's delivery of SWP Water to DPWD in exchange for an equivalent amount of CVP Water available to DWR at O'Neill Forebay.
- E. The proposed delivery of SWP Water to DPWD in exchange for CVP Water increases DPWD's operational flexibility and allows an alternate point of delivery of water supply to the CVP service area within DPWD LTR1-P Contract boundaries. There is no increase in total SWP or CVP allocations.
- F. The State Water Resources Control Board (SWRCB), on December 30, 2020, approved a petition for a long-term consolidation of SWP and CVP places of use allowing the water exchange under this Agreement.
- G. DWR, as the lead agency under the California Environmental Quality Act (CEQA), adopted a Negative Declaration (ND) titled, "North of O'Neill Forebay Long-Term Exchanges Between DWR and USBR," (SCH#2020019024). The proposed exchange of SWP Water for CVP Water is included in this CEQA document. The ND indicated that the proposed long-term exchange does not have a significant environmental impact and that mitigation measures are not required. A Notice of Determination was filed on March 18, 2020.
- H. Reclamation as a facilitator of the exchange for DPWD completed an Environmental Assessment Number EA-16-043 and resulting Finding of No Significant Impact dated May 2017.
- I. Reclamation envisions seeking authority to extend the term through December 31, 2035, consistent with the approved SWRCB's Order and pending Reclamation's delegated authority.

AGREEMENT

DWR approves the annual exchange of up to 3,966 acre-feet of CVP Water with SWP Water, subject to the following terms and conditions:

TERM

1. This Agreement shall become effective upon execution by all Parties and shall terminate five years after the execution of this Agreement or upon final payment to DWR by DPWD and OFWD of all costs attributable to this Agreement, whichever occurs later. However, the liability, hold harmless and indemnification obligations in this Agreement shall remain in effect until the expiration of the applicable statute of limitations, or until any claim or litigation concerning this Agreement asserted to DWR, Reclamation, DPWD, or OFWD within the applicable statute of limitations is finally resolved, whichever occurs later.

UNIQUENESS OF AGREEMENT

2. DWR's approval for the exchange of SWP Water with CVP Water under this Agreement is unique and shall not be considered a precedent for future agreements or DWR activities.

APPROVALS

3. The delivery of water under this Agreement shall be contingent upon, and subject to, any necessary approvals and shall be governed by the terms and conditions of such approvals and any other applicable legal requirements. OFWD and DPWD shall be responsible for complying with all applicable laws and legal requirements and for securing any required consent, approvals, permits, or orders. OFWD and DPWD shall furnish to DWR copies of all approvals and agreements required for the delivery of water under this Agreement.
4. Any water delivered under this Agreement is subject to and must comply with DPWD's LTR1-P Contract. Reclamation shall furnish to DWR copies of all approvals required for the exchange between CVP Water and SWP Water under this Agreement.
5. Water delivery under this Agreement shall cease immediately if DWR determines that Reclamation or DPWD has failed to comply with any of the terms and conditions of this Agreement.
6. If DWR ceases any delivery under this Agreement due to DPWD's or Reclamation's non-compliance with this Agreement, DPWD and Reclamation shall cooperate with DWR as needed to remedy non-compliance before DWR resumes delivery of water under this Agreement. If compliance is not resolved, any outstanding CVP Water quantities Reclamation owes shall be delivered to DWR in accordance with Paragraphs 7-9.

WATER DELIVERY

7. DWR will deliver up to 3,966 acre-feet of SWP Water to DPWD at OFWD's turnout(s) in Reach 2A of the California Aqueduct, based on a schedule submitted by DPWD under Paragraphs 10-15 of this Agreement.
8. After DWR delivers SWP Water to DPWD, Reclamation will deliver an equivalent quantity of CVP Water to DWR at O'Neill Forebay within 60 days after the end of the month in which the water was delivered to DPWD. DWR may terminate this Agreement in the event Reclamation does not deliver an equivalent amount of CVP Water as required by this paragraph.
9. Consistent with Reclamation's water accounting process and in compliance with DPWD's LTR1-P Contract, the Parties herein agree that after Reclamation delivers to DWR at O'Neill Forebay the total quantity of CVP Water owed under this Agreement, no Party shall make additional adjustments to the CVP Water quantity unless approved in advance and in writing by Reclamation on a case-by-case basis and dependent upon DPWD's compliance with pay provisions in the LTR1-P Contract.

WATER DELIVERY SCHEDULES

10. The delivery of SWP Water to DPWD under this Agreement shall be in accordance with a schedule approved by DWR. DWR's approval is dependent upon the times and amounts of the delivery and the overall delivery capability of the SWP. DWR shall not be obligated to deliver the water at times and locations when such delivery would adversely impact SWP operations or facilities, or other SWP contractors.
11. In coordination with Reclamation and OFWD, DPWD will be responsible for scheduling with DWR the delivery of water under this Agreement to OFWD's turnouts in Reach 2A of the California Aqueduct. Reclamation will be responsible for coordinating with DWR to determine the times and availability for delivery of CVP Water to DWR at O'Neill Forebay.
12. Reclamation and DPWD shall coordinate and agree in writing on an annual water delivery schedule showing monthly water deliveries under this Agreement. DPWD and OFWD shall coordinate and agree upon monthly water delivery schedule(s) before DPWD submits the monthly water delivery schedule(s) to Reclamation. DPWD will submit the agreed upon delivery schedule to DWR annually at SWP-SWDS@water.ca.gov. DWR and Reclamation shall coordinate on the annual schedule before DWR delivers any water to OFWD's turnouts under this Agreement.

13. Subsequently, DPWD shall submit monthly water delivery schedules for approval to DWR's State Water Project Analysis Office (SWPAO) Water Deliveries Section, indicating timing and point of delivery requested under this Agreement with reference to SWPAO #21301. Revised schedules shall be sent by electronic mail to SWPDeliveries@water.ca.gov.
14. DPWD, in coordination with Reclamation, shall submit weekly water delivery schedules, which shall also be concurrently sent by electronic mail by 10:00 am, Wednesday, for the following week, Monday through Sunday, to the following:
 - i. State Water Project Operations Control Office
Water Management Branch
Water_deliv_sched@water.ca.gov
Attention: Chief, Water Management Branch
 - ii. State Water Project Operations Control Office
POCOptimization@water.ca.gov
Attention: Chief, Power Management and Optimization Branch
 - iii. State Water Project Operations Control Office
Pre-Scheduling Section
Presched@water.ca.gov
Attention: Chief, Pre-Scheduling Section
 - iv. State Water Project Operations Control Office
Regulatory Compliance and Reporting Branch
OCO_car_reprt@water.ca.gov
PHONE (916) 574-2677
Attention: Chief, Reports Section
 - v. Delta Field Division
Water Operations Section
FAX (209) 833-2049
Attention: Chief, Water Operations Section

WATER DELIVERY RECORDS

15. DWR and Reclamation will coordinate and maintain records accounting for the delivery of SWP Water to DPWD and for an equivalent amount of CVP Water delivered to DWR in O'Neill Forebay under this Agreement. Accounting coordination and the delivery of CVP Water to DWR shall occur within 60 days

after the end of the month in which the water was delivered to DPWD. No additional adjustments to delivery quantities may occur after 60 days without Reclamation's and DWR's advance written approval.

NO IMPACT

16. This Agreement shall not be administered or interpreted in any way that would cause adverse impacts to SWP approved Table A water or to any other SWP approved water allocations, water deliveries, or SWP operations or facilities. DPWD and OFWD shall be responsible, jointly and severally, as determined by DWR, for any adverse impacts that may result from the delivery of water under this Agreement.
17. This Agreement shall not be administered or interpreted in any way that would cause adverse impacts to any CVP approved water allocations, water deliveries, or CVP operations or facilities. DPWD and OFWD shall be responsible, jointly and severally, as determined by Reclamation, for any adverse impacts that may result from the exchange of water.

CHARGES

18. DWR is responsible for the transportation cost associated with the delivery of SWP Water and any additional water needed to account for loss to OFWD's turnouts in Reach 2A of the California Aqueduct.
19. Consistent with DPWD's LTR1-P Contract, Reclamation is responsible for delivery of DPWD's CVP Water. As such, Reclamation is responsible for any additional water needed to account for loss to O'Neill Forebay. DPWD's water delivery costs will include, as applicable but not limited to, pumping, power, and conveyance charges.

LIABILITY

20. DWR is not responsible for the use, effects or disposal of water under this Agreement once DWR delivers the water to the designated turnout(s). Responsibility shifts from DWR to OFWD and/or DPWD once DWR delivers the water to the designated turnout(s). Reclamation shall be responsible for delivering CVP Water to DWR for exchange at O'Neill Forebay. DPWD's responsibility for CVP Water delivered shall be consistent with DPWD's LTR1-P Contract.
21. DPWD and OFWD agree to defend and hold DWR and Reclamation, their officers, employees, and agents harmless from any direct or indirect loss, liability, lawsuit, cause of action, judgment or claim, and shall indemnify DWR and Reclamation, their officers, employees, and agents from all lawsuits, costs, damages, judgments, attorneys' fees, and liabilities that DWR and Reclamation, their officers, employees, and agents, incur as a result of DWR or Reclamation

providing services under this Agreement, except to the extent resulting from the sole negligence or willful misconduct of DWR or Reclamation, their officers, employees and agents.

22. Reclamation and DWR mutually agree to hold each other, and their respective officers, agents, and employees harmless from and against any and all claims, demands, losses, damages, causes of action, suits and liabilities of every kind for injury to or death of a person or for loss of or damage to any property, resulting from any negligent act or omission of any employee of Reclamation and DWR in the course of their employment related to the activities under this Agreement.
23. If uncontrollable forces preclude DWR from delivering water to OFWD's turnouts under this Agreement, either partially or completely, then DWR is relieved from its obligation to deliver the water to the extent that DWR is reasonably unable to complete the obligation due to the uncontrollable forces. Uncontrollable forces shall include, but are not limited to earthquakes, fires, tornadoes, floods, and other natural or human caused disasters.
24. If uncontrollable forces preclude Reclamation from returning the water to DWR under this Agreement, either partially or completely, within 60 days after the month the water was delivered to DPWD, then Reclamation is temporarily relieved from its obligation to deliver the water to the extent that Reclamation is reasonably unable to complete the obligation due to the uncontrollable forces. Uncontrollable forces shall include, but are not limited to earthquakes, fires, tornadoes, floods, and other natural or human caused disasters.

DISPUTE RESOLUTION

25. In the event of a dispute regarding interpretation or implementation of this Agreement, the Director of DWR, Regional Director of Reclamation and the General Manager(s) of DPWD and OFWD, or their authorized representatives shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute is unresolved, any Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

ASSIGNMENT OF AGREEMENT

26. Without the prior written consent of DWR and Reclamation, this Agreement is not assignable by DPWD or OFWD in whole or in part.

PARAGRAPH HEADINGS

27. The paragraph headings of this Agreement are for the convenience of the Parties and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

OPINIONS AND DETERMINATION

- 28. Where the terms of this Agreement provide for actions to be based upon the opinion, judgment, approval, review or determination of any Party, such terms are to be construed as providing that such opinion, judgment, approval, review or determination be reasonable.

MODIFICATION OF AGREEMENT

- 29. No modification of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties to this Agreement.

NO MODIFICATION OF WATER SUPPLY CONTRACT

- 30. This Agreement shall not be interpreted to modify the terms or conditions of OFWD's Water Supply Contract. Unless expressly provided herein, the terms and conditions of OFWD's respective Water Supply Contract and any future amendments apply to this Agreement.

NO MODIFICATION OF DPWD'S LTR1-P CONTRACT

- 31. This Agreement shall not be interpreted to modify the terms or conditions of DPWD's LTR1-P Contract. Unless expressly provided herein, the terms and conditions of DPWD's respective LTR1-P and any future amendments apply to this Agreement.

SIGNATURE CLAUSE

- 32. The signatories represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign. A copy of any resolution or other documentation authorizing OFWD or DPWD to enter into this Agreement, if such resolution or authorization is required, shall be provided to DWR before the execution of this Agreement.

EXECUTION

- 33. The Parties agree that this Agreement will be executed using DocuSign by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature. The agreement shall take effect as soon as all Parties have signed.
- 34. All Parties will receive an executed copy of this Agreement via DocuSign after all Parties have signed.

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IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

Approved as to Legal Form
and Sufficiency

State of California
Department of Water Resources

Acting Katharine Killeen ^{LD}
Chief Counsel
Department of Water Resources

Ted Craddock
Ted Craddock
Deputy Director

8/16/2021
Date

8/16/2021
Date

DEL PUERTO WATER DISTRICT

OAK FLAT WATER DISTRICT

Anthea G. Hansen
Name

Anthea G. Hansen
Name

General Manager
Title

General Manager
Title

8/13/2021
Date

8/13/2021
Date

U.S. BUREAU OF RECLAMATION

Ernest Conant
Name

Regional Director
Title

8/11/2021
Date

Certificate Of Completion

Envelope Id: 8774B92D25B449CD9CC98C213B7CDC2E
Subject: Please DocuSign: 21301.dpwd.cvp.swp.exchange.long-term.Final.docx
Source Envelope:
Document Pages: 9 Signatures: 5
Certificate Pages: 6 Initials: 1
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

Envelope Originator:
DWR SWPAO Executive Secretary
1416 9th Street
Sacramento, CA 95814
SWPAOExecSecr@water.ca.gov
IP Address: 136.200.53.23

Record Tracking

Status: Original Holder: DWR SWPAO Executive Secretary
7/1/2021 3:05:41 PM SWPAOExecSecr@water.ca.gov
Security Appliance Status: Connected Pool: StateLocal
Storage Appliance Status: Connected Pool: Department of Water Resources

Location: DocuSign

Location: DocuSign

Signer Events

Ernest Conant
econant@usbr.gov
Regional Director
Security Level: Email, Account Authentication (None)

Signature

Ernest Conant

Signature Adoption: Pre-selected Style
Using IP Address: 73.66.230.129

Timestamp

Sent: 8/11/2021 10:10:53 AM
Viewed: 8/11/2021 1:31:17 PM
Signed: 8/11/2021 1:31:58 PM

Electronic Record and Signature Disclosure:

Accepted: 8/11/2021 1:31:17 PM
ID: 54f790a2-2975-43d1-85a3-860f928a32c2

Anthea G. Hansen
ahansen@delpuertowd.org
General Manager
Security Level: Email, Account Authentication (None)

Anthea G. Hansen

Signature Adoption: Pre-selected Style
Using IP Address: 12.189.125.90

Sent: 8/11/2021 1:32:00 PM
Viewed: 8/11/2021 2:34:59 PM
Signed: 8/13/2021 2:22:32 PM

Electronic Record and Signature Disclosure:

Accepted: 8/19/2020 3:16:50 PM
ID: 71145677-f9e5-443b-a62b-1849dadaea37d

Katerina Deaver
katerina.deaver@water.ca.gov
Department of Water Resources
Security Level: Email, Account Authentication (None)

KD

Signature Adoption: Pre-selected Style
Using IP Address: 136.200.53.19

Sent: 8/13/2021 2:22:35 PM
Viewed: 8/16/2021 1:28:07 PM
Signed: 8/16/2021 1:48:56 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Katharine Killeen
katharine.killeen@water.ca.gov
Security Level: Email, Account Authentication (None)

Katharine Killeen

Signature Adoption: Pre-selected Style
Using IP Address: 65.78.179.26

Sent: 8/16/2021 2:08:14 PM
Viewed: 8/16/2021 2:10:25 PM
Signed: 8/16/2021 2:58:28 PM

Electronic Record and Signature Disclosure:

Accepted: 8/16/2021 2:58:19 PM
ID: 7207b49a-f6f8-4bca-9215-de6537ca5222

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**MEMORANDUM OF
AGREEMENT FOR WATER TRANSFER
OF CVP ALLOCATION BETWEEN
DEL PUERTO WATER DISTRICT AND
KERN-TULARE WATER DISTRICT**

This Memorandum of Agreement for Water Transfer of CVP Allocation Between Del Puerto Water District and Kern-Tulare Water District (“**Memorandum**”) is made effective this ____ day of _____ 2024, by and between Del Puerto Water District, hereinafter referred to as “**DPWD**”, and Kern-Tulare Water District, hereinafter referred to as “**KTWD**.”

RECITALS:

- A. Both parties to the Agreement are self-governing public agencies of the State of California, duly formed and operating under the laws of the state, and are empowered to enter into contracts to manage the water supply available to it for the benefit of its constituents, and
- B. DPWD is a contractor with the Bureau of Reclamation (“**Bureau**”) and is entitled to receive Central Valley Project (“**CVP**”) and settlement water therefrom pursuant to Contract No. 14-06-200-922-LTR 1-P (“**DPWD Contract**”) between the Bureau and DPWD providing for water service.
- C. KTWD is a contractor with the Bureau and is entitled to receive CVP water pursuant to USBR Contract No. 14-06-200-8601A-IR5-P and 14-06-200-8367A-IR5-P between USBR and KTWD and has agreements to bank water in Kern County with several entities.
- D. On _____, 2024 DPWD and KTWD entered into that Agreement for Water Transfer of CVP Allocation Between Del Puerto Water District and Kern-Tulare Water District (“**CVP Agreement**”) pursuant to which DPWD agreed to transfer up to 3,300 acre-feet (“**AF**”) of 2023-24 water from its CVP contract to KTWD (“**Water**”). Water will be delivered to KTWD during January 2024 through February 2024.

AGREEMENT

- 1. **Term**. The CVP Agreement terminates on February 29, 2024.
- 2. **Provisions**. The CVP Agreement Provides:

A. Pursuant to the terms and conditions of the Bureau’s approval, DPWD will make available to KTWD up to 3,300 AF of Water for delivery during the Term pursuant to a schedule approved by the Bureau in coordination with DPWD.

B. The point of delivery of Water to KTWD shall be O'Neill Forebay ("**Delivery Point**"). Deliveries of Water from DPWD to O'Neill Forebay shall be measured by the California Department of Water Resources ("**DWR**").

C. DPWD agrees to pay its Bureau rates for CVP services required to effectuate the transfer. KTWD is responsible for paying the San Luis Delta Mendota Water Authority O&M charges to move the water from Jones Pumping Plant to O'Neill Forebay. Other internal fees of the DPWD are not part of this purchase and transfer and therefore such fees, if any, are not included in this or any other agreement.

D. DPWD shall be responsible for the cost of obtaining any and all approvals legally required for the delivery of Water to KTWD. Such approvals shall be identified and agreed to by the parties within fifteen (15) days from the execution of the Agreement. Should the DPWD determine that any approvals so identified are unreasonable, in DPWD's sole and absolute discretion, DPWD shall have the right to terminate this Agreement by providing KTWD with written notice within thirty (30) days of execution of this Agreement. Should DPWD terminate this agreement, DPWD's sole remaining obligation or liability will be to refund all payments made by KTWD.

E. The performance by both parties to this Agreement is contingent upon approval of the Bureau.

IN WITNESS WHEREOF, the parties execute this Memorandum on this day and year first above mentioned.

KERN-TULARE WATER DISTRICT

DEL PUERTO WATER DISTRICT

By _____

By _____

Skye Grass, General Manager

Anthea Hansen, General Manager

V.B.

**AGREEMENT FOR WATER TRANSFER
OF CVP ALLOCATION BETWEEN
DEL PUERTO WATER DISTRICT AND
KERN-TULARE WATER DISTRICT**

This AGREEMENT FOR WATER TRANSFER OF CVP ALLOCATION BETWEEN DEL PUERTO WATER DISTRICT AND KERN-TULARE WATER DISTRICT (“**Agreement**”) is made this _____ day of January 2024 (“**Effective Date**”), by and between the Del Puerto Water District (“**DPWD**”) and Kern-Tulare Water District (“**KTWD**”).

RECITALS:

A. Both parties to the Agreement are public agencies of the State of California, duly formed and operating under the laws of the state, and are empowered to enter into contracts to manage the water supply available to them for the benefit of their constituents.

B. DPWD is a contractor with the United States Department of the Interior, Bureau of Reclamation (“**USBR**”) and is entitled to receive Central Valley Project (“**CVP**”) water (“**Project Water**”) from Contract No. 14-06-200-922-LTR1-P (“**DPWD Contract**”) between USBR and DPWD which provides that USBR will deliver Project Water during the 2023-24 water year, subject to the terms and conditions of the contract.

C. KTWD is a contractor with USBR and is entitled to receive Project Water pursuant to Contracts No. 14-06-200-8601A-IR5-P and 14-06-200-8367A-IR5-P between USBR and KTWD and has agreements to bank water in Kern County with several entities.

D. DPWD has found and determined that it can make available from its 2023-24 supply of Project Water up to 3,300 acre-feet (“**AF**”) of water temporarily surplus to the needs of DPWD’s customers within its boundaries.

AGREEMENT

1. The Recitals above are incorporated in full into this Agreement.
2. **TERM.** This Agreement shall begin on the Effective Date and continue until delivery of the Transfer Water (defined herein) or February 29, 2024, whichever is earlier.
3. **AMOUNT OF WATER.** Pursuant to the terms and conditions of USBR’s approval, DPWD will make available to KTWD up to 3,300 AF of Project Water for delivery between January and the end of February of 2024, as calculated pursuant to Recital D, and pursuant to a schedule approved by the USBR in coordination with DPWD and KTWD (“**Transfer Water**”).

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4. **DELIVERY AND MEASUREMENT.** The point of delivery of Transfer Water to KTWD shall be O'Neill Forebay ("**Point of Delivery**") and shall be measured by the Department of Water Resources.

5. **SCHEDULING.** Concurrent with execution of this Agreement, DPWD and KTWD will cooperatively establish and mutually agree upon the schedule for delivery of the Transfer Water.

6. **COST OF WATER.** KTWD agrees to pay DPWD Fifty-Nine and 54/100 Dollars (\$59.54) for each AF of Transfer Water made available at the Point of Delivery pursuant to this Agreement, for a total of up-to One Hundred Ninety-Six Thousand Four Hundred Eighty-Two Dollars (\$196,482.00) ("**Purchase Price**").

a. DPWD shall be responsible to pay to USBR the following charges:

- i. DPWD's applicable Contract Rate for water (currently \$35.81 per AF);
- ii. Conveyance Pumping Capital Dos Amigos PP (currently \$0.58 per AF);
- iii. Restoration Fund payment (currently \$13.00 per AF);
- iv. Trinity PUD payment (currently \$0.15 per AF);

KTWD will pay any additional USBR charges directly to DPWD. KTWD shall be responsible for paying a commission directly to The Water Agency, Inc., 455 West Fir Avenue, Clovis, CA 93611.

b. KTWD shall pay when due, directly to the San Luis & Delta-Mendota Water Authority any and all rates, charges, and/or assessments of any kind applicable to delivery of the Transfer Water to O'Neill Forebay.

7. **PAYMENT.** After execution of this Agreement, and within thirty (30) days after receipt of USBR acknowledgement and approval of the transfer contemplated herein, KTWD will deliver to DPWD the full amount of the Purchase Price.

8. **APPROVALS.** DPWD shall be responsible for the cost of obtaining any and all approvals legally required for the delivery of Transfer Water in accordance with this Agreement.

9. **ENVIRONMENTAL REVIEW.** The parties acknowledge that they will complete the necessary reviews under the California Environmental Quality Act for the transfer that is proposed to be accomplished by this Agreement, and that Reclamation has completed the necessary reviews under the National Environmental Policy Act.

10. **CONDITIONS PRECEDENT.** The performance by both parties to this Agreement is contingent upon approval of the USBR. Each party to this Agreement shall, in good faith, assist the other in obtaining all such necessary approvals, and to cooperate and assist each other in good

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faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.

11. **RESTRICTIONS ON USE.** KTWD agrees that all Transfer Water provided by DPWD pursuant to this Agreement will be used within the boundaries of KTWD or banked with one of its banking partners for its use. KTWD agrees that it will place all Transfer Water to an agricultural use that is reasonable and beneficial. KTWD will maintain books and records with regard to the use of any and all water provided pursuant to this Agreement sufficient to enable DPWD to show proof of the reasonable and beneficial use of said water. Consistent with the provisions of Water Code Sections 475 and 1244, the parties agree that neither this transfer nor this Agreement are evidence of the availability of surplus water beyond the terms of this Agreement or lack of beneficial use of the water involved in this Agreement, and the parties will not contend otherwise.

12. **NO ENTITLEMENT TO WATER.** KTWD and DPWD agree that the delivery of the Transfer Water under this Agreement will not give KTWD a continued right to acquire DPWD water beyond the term of this Agreement.

13. **LIMITING CONDITIONS.** DPWD's obligation to deliver Transfer Water pursuant to the terms of this Agreement will, at all times, be subject and subordinate to any applicable federal and state laws and regulations now in existence and as modified from time to time ("**Laws**"), affecting DPWD's rights or obligations only to the extent that the Laws make it impracticable for DPWD to provide any Transfer Water.

14. **WATER SUPPLY REDUCTIONS.** Water supply to be delivered to KTWD under this Agreement may be reduced by DPWD for any of the following reasons: the Limiting Conditions; failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of Transfer Water otherwise available to DPWD; and any action, legislation, ruling or determination adverse to DPWD preventing its ability to meet obligations under the Agreement and beyond the reasonable control of DPWD. DPWD will make a good faith effort to oppose such reductions, but KTWD agrees that DPWD will not be liable for reductions of supply in this Agreement due to such causes. Water supply to be delivered by DPWD under this Agreement may be reduced by KTWD if any Limiting Condition, failure of facilities or any action, legislation, ruling or determination adverse to KTWD preventing its ability to meet obligations under the Agreement and beyond the reasonable control of KTWD, or if the inability of DPWD to make the Transfer Water available, causes the inability of KTWD to take delivery of the Transfer Water during the established schedule for delivery. KTWD will make a good faith effort to oppose such reductions and in the event of the inability of KTWD to take the Transfer Water available during the established schedule for delivery and will work cooperatively with DPWD to accommodate any storage and delivery options available to the parties per the terms of DPWD's CVP contract. In the event of a reduction of supply caused by factors listed in this Section, KTWD will pay only for water actually delivered. Each Party shall notify the other in writing as soon as practicable that a condition necessitating a water supply reduction has occurred, and DPWD shall refund to the KTWD within sixty (60) days after such notice any part of the Purchase Price paid for water not delivered.

15. **CAPACITY CONSTRAINTS and FORCE MAJEURE:** Except as otherwise provided herein, all obligations of the parties hereto shall be suspended so long as, and to the extent that, the performance thereof or if any portion of the transfer water cannot be delivered or shall be prevented due to restrictions of availability of canals or banking facility capacity which are beyond the control of KTWD, earthquakes, fires, tornadoes, facility failures, floods, drowning, strikes, other casualties or acts of God, orders of court or governmental agencies having jurisdiction over the subject matter thereof or other events or causes beyond the control of the parties hereto. Furthermore, if water is not made available by DPWD as a result of causes listed in Sections 13, 14 or 15, DPWD shall refund to KTWD any amounts paid by KTWD to DPWD for each AF of Transfer Water not made available for which KTWD had already paid.

16. **INDEMNITY.** Each party shall agree to protect, defend, indemnify, and hold harmless the other party and its directors, officers, agents, employees, and consultants from and against any and all third-party losses, claims, liens, demands and causes of action of every kind and character connected with or arising directly or indirectly out of the performance or non-performance by the indemnifying party hereunder to the Agreement.

17. **ATTORNEYS' FEES & COSTS.** The prevailing party in any litigation or other action to enforce or interpret the Agreement shall be entitled to reasonable attorneys' fees, expert witness fees, costs of suit, and other and necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.

18. **THIRD-PARTY BENEFICIARIES.** This Agreement shall not create any right of interest in any non-party or in any member of the public as a third-party beneficiary.

19. **PARTIAL INVALIDITY.** If after the date of execution of the Agreement, any provision of the Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of the Agreement, such provision shall be fully severable.

20. **AUTHORITY.** Each signatory shall represent that s/he is authorized to execute the Agreement on behalf of the party for which s/he signs. Each party shall represent that it has legal authority to enter into this Agreement and to perform all obligations under the Agreement.

21. **SPECIFIC PERFORMANCE.** It is agreed by the parties hereto that in this arid region the water delivered herein is of unique value and that, in the event of breach of this Agreement, specific performance of the Agreement in accordance with its terms and conditions will be proper injunctive relief, and such injunctive relief may be sought at any time during the term of the Agreement.

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

23. **NOTICES.** Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by nationally recognized overnight courier service, or sent by certified or registered mail, postage prepaid, or sent by Electronic Transmission (subject to confirmation of such transmission). Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) three (3) Business Days after it is deposited with a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by email prior to 5:00 p.m. (PST) on any Business Day or the next succeeding Business Day if sent by email after 5:00 p.m. (PST) on any Business Day or on any day other than a Business Day or (iv) five (5) Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or email, or to such other address or addresses or email as such party may subsequently designate to the other parties by notice given hereunder:

DEL PUERTO WATER DISTRICT
Attention: General Manager
P. O. Box 1596
Patterson, California 95363
Phone: (209) 892-4470
Email: ahansen@delpuertowd.org

KERN-TULARE WATER DISTRICT
Attention: General Manager
5001 California Avenue, Suite 102
Bakersfield, CA 93309
Phone: 661-327-3132
Email: skye@kern-tulare.com

As used herein, “**Business Day**” means any day other than a Saturday, Sunday, or any other day on which banking institutions in the State of California are authorized by law or executive action to close.

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

25. **OTHER AGREEMENTS.**

- a. Nothing contained herein restricts DPWD from entering into other water transfer or wheeling agreements, provided such agreements do not unreasonably interfere with DPWD’s obligation to KTWD under this Agreement.
- b. The Parties understand that for purposes of seeking regulatory and agency(ies) approvals, they shall execute separate transfer agreements for the water types described in Recital F, provided that the total quantity of Transfer Water under said transfer agreements and this

agreement shall not exceed 3,300 acre-feet. This provision shall be incorporated by reference into the separate transfer agreement.

26. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between DPWD and KTWD and supersedes any oral agreement, statement, or promise between them relating to the subject matter of the Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by all parties to be effective.

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

IN WITNESS WHEREOF, the parties execute this Agreement on this day and year first above mentioned.

DEL PUERTO WATER DISTRICT

By _____
Anthea Hansen, General Manager

KERN-TULARE WATER DISTRICT

By _____
Skye B. Grass, General Manager