

MOU

**FIRST AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING BETWEEN
FRIANT WATER USERS AUTHORITY AND
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
RELATING TO ALLOCATION, COLLECTION AND PAYMENT OF
OPERATION, MAINTENANCE & REPLACEMENT COSTS FOR
WATER DELIVERED THROUGH
CERTAIN CENTRAL VALLEY PROJECT FACILITIES**

This First Amended and Restated Memorandum of Understanding is made effective as of September 1, 2002, by and among the Friant Water Users Authority, a joint powers agency of the State of California organized and existing pursuant to Government Code Section 65000, *et seq.* and the San Luis & Delta-Mendota Water Authority, a joint powers agency of the State of California organized and existing pursuant to Government Code Section 65000, *et seq.*, and amends and restates the Memorandum of Understanding made and entered into by the parties effective as of March 1, 1998.

DEFINITIONS

As used herein, the following terms have the meanings indicated below. Terms with their initial letters capitalized but not defined below have the same meanings ascribed to them in the FWUA Transfer Agreement and the SLDMWA Transfer Agreement.

1. CVP Contractors: Parties that receive water pursuant to Water Delivery Contracts or that receive Other Water as said terms are defined in Article 1 of the SLDMWA and FWUA Transfer Agreements.
2. Friant Division Contractors: CVP Contractors receiving water service from the Friant Division of the Central Valley Project, including members and non-members of the FWUA.
3. FWUA: The Friant Water Users Authority.
4. FWUA Transfer Agreement: That certain Agreement for the Transfer of the Operation, Maintenance and Replacement, and Certain Financial and Administrative Activities of the Friant-Kern Canal and Related Works between the Friant Water Users Authority and the United States of America effective March 1, 1998, as amended.
5. Memorandum of Understanding or "MOU": This Agreement.
6. OM&R: Operation, maintenance and replacement as that phrase is defined in the SLDMWA Transfer Agreement.

7. OM&R Costs: Costs of providing OM&R for the Project Facilities pursuant to the SLDMWA Transfer Agreement, including without limitation conveyance pumping costs associated therewith.
8. OM&R Program: All activities of the SLDMWA required for the OM&R of the Project Facilities pursuant to the SLDMWA Transfer Agreement, including but not limited to, the program of work to be performed, the preparation and adoption of budgets, funding (including establishment of reserves and creation of debt), purchasing, auditing, inspections, cost recovery methodology and administrative responsibilities.
9. Project Facilities: The physical works and appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the O'Neill Forebay, the Mendota Pool, the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities, and the San Luis Drain; this term is intended to encompass the same facilities defined as the "Project Works" in the SLDMWA Transfer Agreement.
10. Settlement Contractors: Those contractors listed on the attached Exhibit A entitled to receive water service through the Project Facilities without charge.
11. Settlement Water: Water the Settlement Contractors are entitled to receive without charge from Project Facilities.
12. SLDMWA: The San Luis & Delta-Mendota Water Authority.
13. SLDMWA Cost Plan: The cost allocation methodology described on that attached Exhibit B.
14. SLDMWA Transfer Agreement: That certain Agreement to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the San Luis and Delta-Mendota Canals, Tracy Pumping and O'Neill Pumping/Generating Plant, San Luis Drain and Associated Works between the San Luis & Delta-Mendota Water Authority and the United States of America effective March 1, 1998, as amended.
15. USBR: United States Department of Interior, Bureau of Reclamation.

RECITALS

1. Since March 1, 1998, the costs of operating, maintaining and replacing certain Central Valley Project (the "CVP") conveyance facilities and the San Luis Drain, and the costs of conveyance pumping, no longer have been funded by the USBR through federal appropriations and instead are being funded pursuant to those certain Agreements for the Transfer of the Operation, Maintenance and Replacement, and certain Financial and Administrative Activities (the "Transfer Agreements") entered into between USBR and (i) the SLDMWA, (ii) the FWUA,

and (iii) the Madera Irrigation District and the Chowchilla Water District, and the October 1, 1996 Transfer Agreement between the USBR and the Tehama-Colusa Water Authority, respectively (referred to as the "Conveyance Contractors"), except that the USBR has entered into, or agreed to enter into, other appropriate legal instruments to fund OM&R costs for CVP Contractors which have a deficiency, as that term is defined in Article 11(c) of the SLDMWA and FWUA Transfer Agreements, in payment to the Conveyance Contractors.

2. The Conveyance Contractors have agreed to the principle that in operating under their respective Transfer Agreements, the Conveyance Contractors will replace the USBR's historic CVP-wide pooling of costs of operating, maintaining and replacing CVP conveyance facilities with direct funding by each Conveyance Contractor to cover the operation, replacement and maintenance costs of the facilities assumed by each pursuant to their respective Transfer Agreements.

3. Pursuant to the terms of the SLDMWA Transfer Agreement, the cost of OM&R of CVP conveyance facilities and the San Luis Drain, and the costs of conveyance pumping for water delivered through the Project Facilities will be funded by the SLDMWA, and the SLDMWA will establish budgets and methods for direct recovery of OM&R Costs of such facilities from the CVP Contractors receiving such water.

4. Because deliveries of San Joaquin River water to Friant Division Contractors are dependent upon the delivery of Settlement Water to the Settlement Contractors, those Friant Division Contractors have a critical interest in the OM&R of the Project Facilities and have agreed to pay the O&MR Costs incurred by the SLDMWA under the SLDMWA Transfer Agreement associated with the delivery of the Settlement Water as determined in accordance with this MOU.

5. The FWUA, by virtue of the FWUA Transfer Agreement, is willing to apportion among and collect from the Friant Division Contractors the OM&R Costs incurred by the SLDMWA in delivering Settlement Water for which the FWUA is responsible under this MOU and remitting the same to the SLDMWA, all in accordance with the terms of this MOU.

AGREEMENT

The parties hereby enter into this Memorandum of Understanding for the purposes set forth herein, based upon the facts and definitions stated above, and upon the terms and conditions set forth below, to wit:

I. PURPOSES OF THE MOU

The purposes of this MOU are as follows:

A. To establish the standard for OM&R of the Project Facilities by the SLDMWA, and to set forth certain assurances relating thereto;

B. To establish the methodology for allocating and recovering OM&R Costs;

C. To establish the process for remittance by the FWUA to the SLDMWA of payments collected from the Friant Division Contractors for OM&R Costs allocable to the Friant Division Contractors under this MOU;

D. To establish the principles for input and participation in decision-making by the FWUA in the OM&R Program, including cost allocation, collection and payment procedures, and budgeting;

E. To establish the process of resolution of any disputes that may arise in the implementation of this MOU; and

F. To establish the conditions or events which would trigger renegotiation and/or termination of this MOU.

II. STANDARD FOR OM&R OF THE PROJECT FACILITIES

The OM&R Program shall comply with the standards set forth in the SLDMWA Transfer Agreement; provided, that the OM&R Costs shall not exceed those which are reasonably necessary to OM&R the Project Facilities in accordance with such standards. The parties mutually acknowledge that there are items of deferred maintenance which must be performed on the Project Facilities in order for the OM&R Program to meet the applicable standards, and nothing in this paragraph is intended to preclude the performance of those deferred maintenance items or the equitable development of reserves in accordance with this MOU which will permit the OM&R of the Project Facilities in the future in accordance with the SLDMWA Transfer Agreement.

III. DEVELOPMENT OF COST RECOVERY METHODOLOGY

A. Cost Recovery Methodology for OM&R Costs

1. Principles of Cost Allocation. The OM&R Costs in which the FWUA will share shall be allocated to OM&R activities in accordance with (i) generally accepted accounting principles and (ii) the SLDMWA Cost Plan, which shall be applied consistently for all OM&R activities of the SLDMWA. To the extent the allocation of the costs for specific acquisitions or OM&R activities is not addressed by the SLDMWA Cost Plan, such costs shall be allocated in a manner consistent with the principles contained in the SLDMWA Cost Plan; provided, that if the actual use of such acquired property or facilities use proves to be materially different from that anticipated, appropriate adjustments shall be made in order to more accurately reflect an appropriate allocation of such costs.

2. Reserves. Reserves for extraordinary OM&R, capital replacement, emergencies and other appropriate purposes shall be established in accordance with the SLDMWA Transfer Agreement and the SLDMWA Cost Plan. Only items meeting the criteria attached hereto as Exhibit C (the "Reserve Criteria") shall constitute reserves in which the FWUA must participate for purposes of this MOU.

3. Disbursements of Interest or Reserves. While it is anticipated that all amounts paid by the FWUA to the SLDMWA under this MOU and any associated interest earnings will be retained by the SLDMWA and utilized to support the continued OM&R Program, in the event of any distributions of interest or of reserves, such distributions will be made to the parties providing the funds being distributed or the funds on which the interest to be distributed was earned, including the FWUA.

4. Miscellaneous Revenues. It is anticipated that the SLDMWA may from time to time realize miscellaneous revenues from sources directly related to the OM&R Program, including without limitation revenues from (i) rebates from vendors of products and/or services used in the OM&R Program, (ii) the sale of used equipment originally acquired for use in the OM&R Program, and (iii) amounts collected from third parties for whom the SLDMWA performs contract services using employees, equipment and/or materials otherwise used in the OM&R Program. All such miscellaneous revenues will be retained by the SLDMWA and utilized to support the continued OM&R Program.

IV. ALLOCATION, COLLECTION AND REMITTANCE OF COSTS BY FWUA

A. Recovery from Friant Division Contractors

The FWUA shall, as a part of the FWUA cost recovery methodology developed under the FWUA Transfer Agreement, provide for the recovery of OM&R Costs allocated to Settlement Contractors under the SLDMWA Cost Recovery Plan, which OM&R Costs are to be paid by Friant Division Contractors. To the extent the USBR has conferred upon the FWUA the legal authority to do so, the FWUA shall allocate such costs among, and collect such costs from, the Friant Division Contractors, and shall promptly remit such costs to the SLDMWA.

B. Remedies for Non-Payment or Delinquent Payment

In the event of any non-payment or delinquent payment to the FWUA by a Friant Division Contractor of amounts to be collected by the FWUA and remitted to the SLDMWA under this MOU, the FWUA shall diligently exercise its available remedies, (whether under Article 11 of the FWUA Transfer Agreement, or under California law), in a manner the FWUA reasonably believes is most likely to result in the prompt collection and remittance of such amounts to the SLDMWA. If the FWUA is unable to collect and remit any amount owing from the delinquent Friant Division Contractor before the last day of the month before the scheduled month of delivery (whether from such Friant Division Contractor or from the USBR via offset or direct payment), the USBR shall be deemed to have directed the SLDMWA to deliver or convey Settlement Water despite a delinquency under Article 11 of the SLDMWA Transfer Agreement, and the United States shall be liable to the SLDMWA for the costs to be recovered on account of such Settlement Water under this Agreement; provided, that the FWUA shall also continue to diligently exercise its available remedies in the manner the FWUA reasonably believes is most likely to result in the prompt collection and remittance of such amounts to the SLDMWA. Nothing contained in this MOU authorizes the SLDMWA to terminate Settlement Contractor deliveries in the event of delinquencies in payment by the Friant Division Contractors.

V. FWUA INPUT AND PARTICIPATION IN SLDMWA OM&R ACTIVITIES

A. FWUA Participation

The FWUA shall participate in SLDMWA decision-making relating to the OM&R of the Project Facilities and the OM&R Program through representation and voting on the SLDMWA Finance and Administration Committee and the OM&R Technical Subcommittee.

1. Board of Directors. The FWUA shall not, by virtue of this MOU, be entitled to representation on the SLDMWA Board of Directors, and this MOU shall not be deemed to alter the authority of the SLDMWA Board of Directors to adopt and amend budgets for the conduct of SLDMWA business, including for OM&R of the Project Facilities.

2. Finance and Administration Committee. The FWUA shall be entitled to one of eight positions on the Finance and Administration Committee ("FAC"), with the right to vote on all OM&R budgetary matters. The FAC is an advisory committee to the Board of Directors. A recommendation of the FAC to the Board of Directors to adopt or amend the OM&R Budget shall be adopted by the "yes" vote of at least 5 of 8 members. The FWUA representative shall be appointed by the SLDMWA Chairman upon recommendation from the FWUA, and an alternate representative shall be appointed to participate and to cast the vote of FWUA in the absence of the representative, or in case such representative is barred from voting due to conflict of interest.

3. OM&R Technical Committee. The FWUA shall be entitled to one of 10 positions on the OM&R Technical Committee, with the right to vote on all matters. The OM&R Technical Committee is a subcommittee of the FAC and is advisory to the FAC and the Board of Directors. As long as this MOU is in effect, the OM&R Technical Committee shall be comprised of the following members, with no CVP Contractor entitled to have more than one representative on such committee at any time:

| | |
|--|---|
| Contractors served from the Mendota Pool | 1 |
| Contractors served from the Lower DMC | 1 |
| Contractors served from the Upper DMC | 1 |
| Contractors served from the San Luis Canal (1 from Westlands + 1 from others) | 2 |
| Contractors served from the San Felipe Division | 1 |
| Exchange Contractors | 1 |
| FWUA (appointed by SLDMWA Chairman as recommended by FWUA) | 1 |

| | |
|--|---|
| USBR (appointed by SLDMWA Chairman as recommended by USBR) | 1 |
| SLDMWA Technical Staff | 1 |

One alternate shall be appointed for each such representative, and each such alternate shall participate and cast the vote of the represented party in the absence of the representative or in case the representative is barred from voting due to conflict of interest.

The contractors in each of the above-referenced service areas are listed on the attached Exhibit D.

A recommendation of the OM&R Technical Committee to the FAC to adopt or amend OM&R Budget levels shall be adopted by the "yes" vote of at least 8 of 10 members. The FWUA representative shall be appointed by the SLDMWA Chairman upon recommendation from the FWUA, and the FWUA alternate representative shall be appointed in the same manner. At any point in the budget approval process, a budget or a budgetary issue may be remanded back to the OM&R Technical Committee, which shall diligently meet to reconsider the matter and provide its recommendation.

4. SLDMWA Committee Structure. All matters pertaining to the OM&R budget and the OM&R Program shall be addressed by the FAC and/or OM&R Technical Committee. The SLDMWA shall not alter that delegation of responsibility or the structure/composition of that committee and subcommittee while this MOU is in effect without the consent of the FWUA; provided, that the FWUA shall not withhold such consent in the event the SLDMWA wishes to form new committees or subcommittees to deal with OM&R budgetary and/or OM&R Program matters if the FWUA is entitled to participate on such committees or subcommittees by representation and with voting rights that are equivalent to the rights described in this MOU. Reorganizations of committee structure that do not affect the FWUA participation on OM&R budgetary and/or OM&R Program matters, such as splitting off Administrative matters or other non-OM&R budgets, shall not be affected by the terms of this MOU.

B. Provision of Information

The SLDMWA shall share with the FWUA in a timely manner all relevant information available regarding SLDMWA OM&R budgets; actual OM&R costs incurred, including but not limited to power costs; water deliveries; and all similar information that affects the OM&R budget, the OM&R Program, the SLDMWA Cost Plan, and adjusting estimated costs to actual. All such information shall be provided to the FWUA as soon as reasonably practical.

1. Reports. The SLDMWA shall provide such information by means of its final draft and final Budgets and any Budget Addenda on OM&R; monthly Financial Report, including budget-to-actual expenditures; USBR and/or SLDMWA Water Delivery Reports; and such other reports as may be developed for such purposes from time to time.

2. Access. The FWUA shall be afforded access to inspect SLDMWA records on the same terms as are provided to the USBR pursuant to Article 14(a) of the SLDMWA Transfer Agreement.

C. Notices and Meeting Dates

The SLDMWA shall give the FWUA, its designated representatives and the designated alternate for each timely notice of all meetings of the FAC and OM&R Technical Committee. All information and notices provided to the FWUA by the SLDMWA shall be provided in at least the same detail, and at the same time, as the comparable information and notices provided to SLDMWA members or their representatives participating in the same decision-making. To facilitate FWUA participation as described herein, the SLDMWA shall use its best efforts to establish regular meeting dates for committees and subcommittees that deal with the OM&R Program or any OM&R-related issue on dates that do not conflict with regularly-scheduled FWUA meeting dates, to coordinate meeting dates for special meetings of such committees or subcommittees with the schedules of FWUA representatives, and to permit the FWUA to participate by telephone or other electronic means, and the FWUA shall use best efforts to make its representatives available for such participation.

VI. RESOLUTION OF DISPUTES

A. Process

Disputes relating to interpretation or performance of this MOU shall be resolved according to the process described in this Article.

1. Informal Dispute Resolution. Should any dispute arise between the SLDMWA and the FWUA concerning any matter that is the subject of this MOU, the party raising the disputed issue shall promptly give written notice to the other, and the parties shall thereafter diligently meet and confer in good faith in an effort to resolve the issue. The notice shall contain the date the dispute arose, an explanation of the issue, and the name, address and telephone and fax numbers of the disputing party's representative who should be contacted by the responding party. Each party shall make available, at such party's expense, such policy-level staff members, technical staff, consultants, or Board members as are reasonably necessary to the equitable and expedient resolution of the issue. At any time during this process, either party may request that the Regional Director of the USBR participate in the process to facilitate the resolution, and the other party shall accept such participation if it is provided.

2. Resolution through Trial by Reference. In the event the parties have not reached agreement on resolution of the disputed issue by the first anniversary of the date of the notice described in Section VI.A.1., with or without the assistance of the Regional Director as facilitator, either party may file suit in the Superior Court of Fresno County for proceedings in accordance with Section 638 *et seq.* of the Code of Civil Procedure; provided that the procedure for such reference shall be modified as follows:

- a) Each party shall name one person to serve as referee within 10 days of the date of the Court's order granting the petition for reference, and within 10 days of their selection the two persons so named shall name a third person to serve as referee. If they are unable to agree on a third person, the Court shall appoint the third person. All referees shall have general familiarity with the OM&R of water conveyance facilities and the CVP.
- b) A hearing of the matter before the referees shall be conducted as expediently as possible.
- c) The referees shall issue a draft report of their findings within 20 days after the testimony is closed.
- d) Within 10 days after the date of mailing the draft report, any party may file objections to it with the referees.
- e) If no objection is filed to the draft report, it shall be filed forthwith with the Court. If an objection to the draft report is filed, the referees shall file their final report with the Court within 20 days of the date the objection is filed.
- f) The report of the referee shall be subject to review by the Court upon exception thereto being filed with the Court within 10 days after the filing of the final report by the referees; provided, no exception to the report shall be considered unless it appears that the matter of the exception was presented to the referees in the form of an objection. The Court shall hear the objection at the first available law and motion calendar at least 28 days after the exception was filed.
- g) The report filed by the referee shall be prima facie evidence of the facts therein reported, but the Court may hear such evidence as may be offered by any party to rebut the report, and render the court's own decision.
- h) If no objection to the referees' report is filed with the Court, the report of the referees upon the whole issue shall stand as the decision of the Court.

B. Disputes Causing Cash Flow Difficulties

The parties recognize that circumstances could arise in which the non-payment of amounts due could create material cash flow difficulties for one of the parties. In the event a dispute results in the non-payment of obligations owed to the SLDMWA by the FWUA or a demand from the FWUA for payment by the SLDMWA at such time or in such amount that the

other party becomes unable to reasonably meet its cash flow needs through the terms of this MOU and Article 11(c) of the SLDMWA Transfer Agreement or the FWUA Transfer Agreement, as applicable, the affected party shall not be obligated to pursue the Informal Dispute Resolution described in Section A.1. of this Article VI for a period of longer than ten (10) days, at which time it shall be entitled to commence a court proceeding pursuant to Section A.2. of this Article VI.

C. Status of Obligations During Pendency of Dispute

During the period of any dispute between the parties affecting payment obligations under this MOU, any disputed payments shall continue to be made during the pendency of the dispute as they had been made prior to such dispute, and any changes resulting from the resolution of the dispute shall be implemented by retroactive adjustment of amounts paid to the date when the dispute arose, as indicated on the notice required in Section A.1. above, unless the parties agree upon an alternate adjustment period.

D. Termination of Transfer Agreements

The parties acknowledge that they each have a right to terminate their respective Transfer Agreement on 12 months notice under Article 2(c) thereof, and that a material dispute relating to the interpretation or performance of this MOU, or the unsatisfactory resolution thereof, could lead to such a termination. In order to facilitate mutually acceptable resolution of disputes and reduce the possibility of a termination of either the FWUA Transfer Agreement or the SLDMWA Transfer Agreement, the parties agree that neither of them will give notice of termination of a Transfer Agreement under Article 2(c) thereof for a period of 12 months after the date of the notice described in Section A.1. of this Article VI; provided, that if matters unrelated to any such dispute arise which cause a party to desire termination, such notice may be sooner given.

VII. RENEGOTIATION PRINCIPLES

A. Basis for Agreement

This MOU, including the SLDMWA Cost Plan and Reserve Criteria, represents the parties' negotiated agreement on an equitable apportionment of the OM&R Costs to be incurred by the SLDMWA. In entering into this MOU, the parties have assumed that the water supplies and operations of the parties' respective members will not materially change while this MOU is in effect and that there will be no material change in the use of or access to facilities utilized by the parties and their members after the effective date hereof. Further, they have assumed the accuracy of financial data provided and/or developed by the USBR and the SLDMWA in connection with the negotiation of this MOU, the SLDMWA Cost Plan and Reserve Criteria. The parties acknowledge that all such assumptions were material to their respective decisions to reach the agreements described herein, in the SLDMWA Cost Plan and in the Reserve Criteria, and agree that in the event any of those assumptions proves to be incorrect, or upon the occurrence of certain other events described in Section VII.B., renegotiation of this MOU, the SLDMWA Cost Plan and/or Reserve Criteria is appropriate.

B. Events Triggering Renegotiation of MOU

Should a party conclude that this MOU, including the SLDMWA Cost Plan and Reserve Criteria, can and should be modified to address (i) such party's determination that one or more of the fundamental assumptions described in Section VII.A. was in error, (ii) an administrative or court order materially affecting the water supply or operations of one or more of the agencies comprising such party, or which makes it reasonably foreseeable that such agency(ies) will thereafter suffer a material and adverse change in its/their water supply or operations, or (iii) another significant event which makes it reasonably foreseeable that such party will bear a material increase in OM&R Costs on a per acre foot basis, the parties commit to entering into negotiations in good faith and timely efforts to modify this MOU, the SLDMWA Cost Plan or Reserve Criteria, as applicable.

C. Inability to Reach Agreement on Modification of MOU

In the event a party seeks modification of this MOU pursuant to Section A. of this Article VII, neither party shall give notice of termination of its Transfer Agreement pursuant to Article 2(c) thereof for 12 months after the first negotiation date; provided, that if matters unrelated to the event giving rise to the party's request for modification of this MOU arise which cause a party to desire termination, such notice may be sooner given. Following such 12 month period, either party shall be free to exercise its right to terminate its Transfer Agreement under Article 2(c) thereof if a mutually acceptable modification of this MOU has not been developed.

VIII. MISCELLANEOUS

A. Term of MOU

This MOU shall remain in effect until it is terminated by the mutual agreement of the parties; provided, that this MOU shall automatically terminate without further action of the parties upon the termination of either the FWUA Transfer Agreement or the SLDMWA Transfer Agreement. Upon any termination of this MOU, the SLDMWA Cost Plan shall also terminate. In that regard, the parties acknowledge that the agreements described herein, and particularly the agreements contained in the SLDMWA Cost Plan, are part of a negotiated and comprehensive arrangement which reflects numerous compromises and tradeoffs by the parties. Accordingly, no aspect of this MOU or the SLDMWA Cost Plan is to be construed as precedent, and all aspects thereof must be renegotiated if this MOU is terminated.

B. Attorneys Fees

In the event of any action by any of the parties seeking enforcement or interpretation of any of the terms and conditions of this MOU, including without limitation any action commenced under Article VI, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses including, without limitation, taxable costs and reasonable attorneys' fees.

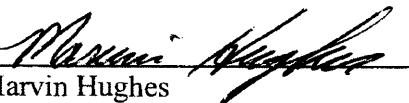
C. Entire Agreement

This MOU and its exhibits contain all of the agreements of the parties hereto with respect to the subject matter hereof. No other prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions hereof may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the parties hereto.


IN WITNESS WHEREOF, the parties have executed this MOU as of the date first above written.

FRIANT WATER USERS AUTHORITY

By: 
Kole Upton, Chairman

By: 
Marvin Hughes
Secretary

SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY

By: 
Michael Stearns, Chairman


By: 
Daniel G. Nelson, Secretary

EXHIBIT A

SETTLEMENT CONTRACTORS

The following contractors shall be entitled to receive, without charge, the designated acre feet of water through the Project Facilities as stated below or as may be amended.

| | Contract # | Acre Feet |
|---|-----------------|-----------|
| Parties to that certain <i>Second Amended Contract for Exchange of Waters with the United States</i> dated February 14, 1968 or their successors, namely, Central California Irrigation District, Firebaugh Canal Company, Columbia Canal Company, and San Luis Canal Company | Ilr-1144 | 840,000 |
| Coelho Trust | 14-06-200-7859A | 1,332 |
| Fresno Slough | 14-06-200-4019A | 866 |
| James Irrigation District | 14-06-200-700-A | 9,700 |
| M.L. Dudley and Company, John G. Indart, and Doris J. Indart | 14-06-200-4448A | 2,280 |
| Melvin D. Hughes and Mardella Hughes | 14-06-200-3537A | 93 |
| Patterson Water District | 14-06-200-3598A | 6,000 |
| Reclamation District No. 1606 | 14-06-200-3802A | 342 |
| Tranquility Irrigation District | 14-06-200-701A | 20,200 |
| State of California (Mendota Wildlife Area) | 14-06-200-4359A | 1,143 |
| State of California (Traction Ranch) | 14-06-200-7859Z | 1,321 |
| Total | | 883,277 |

EXHIBIT B

SLDMWA OM&R COST RECOVERY PLAN.

I. INTRODUCTION – The following is a description of the allocation and recovery of operation, maintenance and replacement costs for the following facilities by the San Luis and Delta Mendota Water Authority:

1. The Delta-Mendota Canal (hereinafter “DMC”);
2. The Tracy Pumping Plant (hereinafter “Tracy PP”);
3. The O’Neill Pumping/Generating Plant (hereinafter “O’Neill PGP”);
4. The Mendota Pool;
5. The federal share of the San Luis Joint Use conveyance and conveyance pumping facilities; and
6. The San Luis Drain.

This SLDMWA OM&R Cost Recovery Plan is an exhibit to the First Amended and Restated *Memorandum of Understanding Between the Friant Water Users Authority and San Luis & Delta-Mendota Water Authority Relating to Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water Delivered Through Certain Central Valley Project Facilities* (hereinafter the “MOU”). The MOU defines the terms and conditions for allocating and recovering the costs associated with the OM&R of the above referenced facilities. Friant Division Contractors shall be obligated to pay the OM&R Costs associated with the delivery of Settlement Water to the Settlement Contractors. The FWUA shall, as part of the FWUA cost recovery methodology developed under the FWUA Transfer Agreement, provide for the recovery of OM&R Costs allocated to the Settlement Contractors under this SLDMWA OM&R Cost Recovery Plan. To the extent the USBR has conferred upon the FWUA the legal

authority to do so, the FWUA shall allocate such costs among, and collect such costs from, the Friant Division Contractors. For ease in representation and for practical considerations, and for the purposes of the MOU and this SLDMWA OM&R Cost Recovery Plan only, Friant Division Contractors will be considered a single CVP Contractor whose water deliveries constitute the total Settlement Water deliveries of the Settlement Contractors. The USBR will be allocated the costs associated with the delivery of Other Water under the provisions of the SLDMWA Transfer Agreement, except to the extent that such Other Water is specifically attributable to another party (e.g. non-CVP water delivered under a Warren Act contract wherein the Warren Act contractor shall be allocated applicable OM&R Costs). For purposes of completeness, OM&R costs of the San Luis Drain are allocated in this SLDMWA OM&R Cost Recovery Plan, but no part thereof shall be allocated, under the Cost Recovery Plan, to the Friant Division Contractors.

II. DEFINITIONS – As used herein, the following terms have the meanings as set forth below. To the extent the following terms are used in the MOU, their definitions are restated here for convenience:

1. CVP Contractors: Parties that receive water pursuant to Water Delivery Contracts or that receive Other Water as said terms are defined in Article 1 of the SLDMWA and FWUA Transfer Agreements.
2. SLDM Contractors: CVP Contractors that receive water via any of the Project Facilities described in the SLDMWA Transfer Agreement.
3. Friant Division Contractors: CVP Contractors receiving water service from the Friant Division of the Central Valley Project, including members and non-members of the FWUA.

4. FWUA Transfer Agreement: That certain *Agreement to Transfer the Operation, Maintenance and Replacement, and Certain Financial and Administrative Activities of the Friant-Kern Canal and Associated Works* effective March 1, 1998, as amended.
5. OM&R: Operation, maintenance and replacement as that phrase is defined in the SLDMWA Transfer Agreement.
6. OM&R Costs: Costs of providing OM&R for the Project Facilities pursuant to the SLDMWA Transfer Agreement, including without limitation conveyance pumping costs associated therewith.
7. Project Facilities: The physical works and appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping /Generating Plant, the federal share of the associated O'Neill Forebay and Dam, the Mendota Pool, the federal share of San Luis Unit Joint Use conveyance and conveyance pumping facilities and the San Luis Drain.
8. Settlement Contractors: Those contractors, listed in Exhibit A of the MOU, entitled to receive water service through the Project Facilities without charge.
9. Settlement Water: Water the Settlement Contractors are entitled to receive without charge from Project Facilities.
10. SLDMWA: The San Luis & Delta-Mendota Water Authority.
11. SLDMWA Transfer Agreement: That certain *Agreement to Transfer the Operation, Maintenance and Replacement, and Certain Financial and Administrative Activities Related to the San Luis and Delta-Mendota*

Canals, Tracy Pumping and O'Neill Pumping/Generating Plant, San Luis Drain and Associated Works effective March 1, 1998, as amended.

12. USBR: United States Department of Interior, Bureau of Reclamation.
13. Year: March 1 through February 28/29.

III. COST POOLS - OM&R Costs shall be accumulated into six cost pools, defined as the Upper DMC and Tracy PP cost pool (hereinafter "Upper Cost Pool"), the Lower DMC/Mendota Pool cost pool (hereinafter "Lower Cost Pool"), the San Luis Joint Use conveyance and conveyance pumping facilities cost pool (hereinafter "DWR Cost Pool"), the Tracy PP power cost pool (hereinafter "Tracy Power Cost Pool"), the O'Neill PGP cost pool (hereinafter "O'Neill Cost Pool") and the San Luis Drain

A. The Upper Cost Pool includes:

1. The OM&R Costs for the Tracy PP and related Tracy field office facilities, excluding energy costs.
2. The OM&R Costs for the DMC from the Tracy PP to Check 13 (hereinafter "Upper DMC");
3. The OM&R Costs for the Westley, Newman, and Volta Wasteways; and
4. The OM&R Costs for the intake channel from the Tracy Fish Facility to the Tracy Pumping Plant.

B. The Lower Cost Pool includes:

1. The OM&R Costs for the DMC from Check 13 to (but not including) the Mendota Pool (hereinafter "Lower DMC");
2. The OM&R Costs for the Mendota Pool; and
3. The OM&R Costs for the Firebaugh Wasteway.

- C. The DWR Cost Pool includes the federal share of the OM&R Costs of the San Luis Joint Use conveyance and conveyance pumping facilities and the energy costs incurred in pumping water at the Dos Amigos Pumping Plant. The DWR costs associated with the OM&R costs of the O'Neill Forebay and Dam are included the O'Neill Cost Pool and, therefore, are not included in the DWR Cost Pool.
- D. The Tracy Power Cost Pool includes the energy costs incurred at the Tracy PP and related Tracy field office facilities.
- E. The O'Neill Cost Pool includes:
 - 1. The OM&R Costs for the O'Neill PGP;
 - 2. The OM&R Costs for the O'Neill PGP intake upstream of Check 13 from the DMC to the O'Neill PGP;
 - 3. The energy costs, net of regeneration credits, incurred in pumping water at the O'Neill PGP; and
 - 4. The DWR OM&R Costs for the federal share of the O'Neill Forebay and Dam.
- F. The San Luis Drain Cost Pool includes:
 - 1. The OM&R of the San Luis Drain; and
 - 2. The Maintenance of the Kesterson Reservoir, except that maintenance activity relating to the Cleanup Program as defined in the Bureau of Reclamation, U.S. Department Interior Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995 shall be assigned in accordance with the Report.

The OM&R Costs for the DMC shall be allocated between the Upper Cost Pool and Lower Cost Pool pro rata based on miles of DMC serviced above and below Check 13 (70/116 or 60.34 percent in the Upper Cost Pool and 46/116 or 39.66 percent in the Lower Cost Pool).

IV. COST ALLOCATION TO SLDM CONTRACTORS— The OM&R Costs assigned each Year to each of the cost pools described above will be allocated to SLDM Contractors using the facilities described above for each cost pool in accordance with the following methodology:

- A. Upper and Lower Cost Pools – Costs accumulated in the Upper and Lower Cost Pools will be allocated to each SLDM Contractor based upon the SLDM Contractor’s cost allocation percentage. The cost allocation percentage for the Upper and Lower Cost Pools shall be determined by dividing a SLDM Contractor’s “delivery base” by the total delivery base for all SLDM Contractors sharing in each cost pool. The delivery base for each SLDM Contractor shall be computed for the Upper Cost Pool and the Lower Cost Pool as the greater of the actual water delivered to the SLDM Contractor utilizing that cost pool’s facilities during the Year, or the amount established under the Minimum Participation requirements described in Section V.A. hereof.
- B. DWR Cost Pool - Costs within the DWR Cost Pool shall be sub-allocated into two cost pools, defined as the North of Dos Amigos Cost Pool and the South of Dos Amigos Cost Pool.
 1. The North of Dos Amigos Cost Pool includes the federal share of the DWR OM&R Costs associated with the San Luis Canal north of the Dos Amigos Pumping Plant.
 2. The South of Dos Amigos Cost Pool includes the federal share of the

DWR OM&R Costs associated with the San Luis Canal south of the Dos Amigos Pumping Plant, the federal share of the DWR OM&R Costs associated with the Dos Amigos Pumping Plant, and the energy costs incurred at the Dos Amigos Pumping Plant.

OM&R Costs for the North of Dos Amigos Cost Pool and South of Dos Amigos Cost Pool shall be allocated to the SLDM Contractors directly utilizing the facilities in each such cost pool. The percentage of costs allocated to each such SLDM Contractor shall be determined by dividing the total water deliveries to such SLDM Contractor utilizing the Project Facilities in each cost pool by the total water deliveries to SLDM Contractors utilizing such facilities during the Year.

- C. Tracy Power Cost Pool - Costs within the Tracy Power Cost Pool shall be allocated to those SLDM Contractors whose water is made directly available by virtue of water being pumped at the Tracy PP. The percentage of costs allocated to each such SLDM Contractor shall be determined by dividing the total water deliveries made available to each such SLDM Contractor, as described above in this sub-article (C) by the total of all such water deliveries made available.

Minimum Participation requirements as described in Section V.A. shall not apply to the allocation of the Tracy Power Cost Pool.

- D. O'Neill Cost Pool – Each Year, the O'Neill Cost Pool will be sub-allocated between two cost pools, the "Direct Pumping Cost Pool" and the "Storage Pumping Cost Pool" as follows:

1. For purposes of allocating the O'Neill Cost Pool between the Direct Pumping Cost Pool and Storage Pumping Cost Pool only, water deliveries made during the Year through the San Luis Joint Use or San Felipe facilities will be deemed water delivered in the Direct Pumping Cost Pool and water released from the O'Neill Forebay through the O'Neill PGP into the DMC will be deemed water delivered in the Storage Pumping Cost Pool.
2. The O'Neill Cost Pool shall be sub-allocated to the Direct Pumping Cost Pool and the Storage Pumping Cost Pool pro rata based upon the percentage obtained by dividing each respective pools' share of water deemed delivered, during the Year as described above, against the sum of the two pools' water deliveries during the Year.
3. The Direct Pumping Cost Pool shall be further sub-allocated to SLDM Contractors taking delivery of water directly from the San Luis Joint Use or San Felipe facilities during the Year based upon the percentage obtained by dividing the water delivered to a SLDM Contractor utilizing the O'Neill PGP for water deliveries through the federal share of the San Luis Joint Use facilities or the San Felipe facilities by the total water deliveries utilizing the O'Neill PGP for water deliveries through the federal share of the San Luis Joint Use facilities and the San Felipe facilities during the Year.
4. The Storage Pumping Cost Pool shall be further sub-allocated to SLDM Contractors taking delivery of water directly from the DMC or Mendota

Pool facilities based on the percentage obtained by dividing the water delivered directly from the DMC or Mendota Pool facilities to such SLDM Contractor by the total water delivered directly from the DMC or Mendota Pool facilities to SLDM Contractors during the Year.

None of the allocations described above for the O'Neill Cost Pool shall be subject to the Minimum Participation requirements as described in Section V.A.

- E. San Luis Drain Cost Pool - The maintenance costs assigned to the San Luis Drain Cost Pool shall be allocated to those CVP Contractors with contractual requirements for the payment of such maintenance costs, except that maintenance activity relating to the Cleanup Program as defined in the Bureau of Reclamation, U.S. Department Interior Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995 shall be assigned in accordance with the Report.

V. MISCELLANEOUS COST ALLOCATION PROVISIONS

- A. Minimum Participation – In recognition of the value of providing OM&R even in Years when an individual SLDM Contractor's pro rata share of costs based upon that Year's water deliveries is very low or non-existent, there will be created Minimum Participation amounts of assumed minimum water deliveries, for purposes of cost allocation only, as follows:
 - 1. In Years when San Joaquin River flood flows partially or fully meet the Settlement Water delivery demands of any of the Settlement Contractors, the Settlement Contractors' allocation of the Upper Cost Pool shall be based on the actual deliveries of Settlement Water to the Settlement

Contractors utilizing the Upper Cost Pool facilities or 60 percent of the aggregate of all Settlement Contractors' maximum contractual Settlement Water entitlement, whichever is larger. Provided, however, this Minimum Participation amount shall be reduced by the amount of Settlement Water transferred from the Settlement Contractors to other SLDM Contractors. Provided, further, that no such reduction shall be made in the event that the SLDM Contractor receiving the transferred water has at least the majority of its contractual water supply delivered for irrigation purposes (hereinafter "SLDM Irrigation Water Contractor") and the SLDM Irrigation Water Contractor has a total water supply, including CVP water, transferred water and any non-CVP water delivered using Project Facilities, of less than 25 percent of its contractual maximum for that Year. Accordingly, in determining the Minimum Participation requirement associated with the Settlement Water, transfers of Settlement Water by a Settlement Contractor to a SLDM Irrigation Water Contractor shall reduce the Settlement Contractors' Minimum Participation amount by the lesser of the amount of Settlement Water transferred or the amount of the total water supply delivered to a SLDM Irrigation Water Contractor less 25 percent of the maximum contractual entitlement of that SLDM Irrigation Water Contractor, but not less than zero. The portion of the Lower Cost Pool to be allocated to the Settlement Contractors will be based on total actual Settlement Water deliveries made to the Settlement Contractors through the Lower DMC and/or the Mendota Pool. Thus, the

Settlement Water deliveries that originate as flood flows on the San Joaquin River and delivered through the Mendota Pool and/or the Lower DMC shall be included in the Settlement Contractors' delivery base for allocation of the Lower Cost Pool. (Examples: A Settlement Contractor transfers 10,000 a.f. of water to a SLDM Irrigation Water Contractor which has a maximum contractual entitlement of 100,000 a.f. in a Year in which 45% of the Settlement Water deliveries to the Settlement Contractors are made via the San Joaquin River and Mendota Pool (i.e., the Project Facilities associated with the Upper Cost Pool are not utilized), thus invoking this Minimum Participation clause. For purposes of these examples, the maximum contractual Settlement Water entitlement is presumed to be 880,000 a.f., thus 60% (the Minimum Participation applicable to Settlement Water) of the maximum contractual Settlement Water entitlement is presumed to be 528,000 a.f. **Scenario A:** If a SLDM Irrigation Water Contractor takes water deliveries, including contractual supplies, water transferred in from a SLDM Contractor other than a Settlement Contractor, and any non-CVP water (e.g., Warren Act water),(collectively "total water supply") in excess of 25% (25,000 a.f.) of the SLDM Irrigation Water Contractor's contractual maximum supply, the Minimum Participation applicable to the Settlement Contractors under this will be reduced by 10,000 a.f (60% of the total Settlement Water equals 528,000 a.f. less 10,000 a.f. of transferred water results in the Minimum Participation applicable to the Settlement Contractors of 518,000 a.f.).

Scenario B: If the same 10,000 a.f. of water is transferred by the Settlement Contractor and the total water supply (excluding this 10,000 a.f. of Settlement Water transferred) of the SLDM Irrigation Water Contractor is 21,000 a.f., the Minimum Participation applicable to the Settlement Contractors under this section will be reduced by 6,000 a.f. (4,000 a.f. of the transferred water is required to bring the total water supply of the SLDMW Irrigation Water Contractor to 25% (25,000 a.f.) of its maximum contractual supply; thus only the amount of the Settlement Water transferred that results in the SLDM Irrigation Water Contractor to exceed 25% (25,000 a.f.) of its maximum contractual supply will result in the reduction of the Minimum Participation applicable to the Settlement Contractors under this section: 21,000 a.f. total water supply plus 10,000 a.f. Settlement Water transferred (equals 31,000 a.f.) less 25,000 a.f. (25% of the 100,000 a.f. maximum contractual supply) equals 6,000 a.f.)

Scenario C: If the same 10,000 a.f. of water is transferred by the Settlement Contractor and the total water supply of the SLDM Irrigation Water Contractor, including the Settlement Water transfer, is less than 25,000 a.f. (25% of the 100,000 a.f. maximum contractual entitlement), then no reduction in the Minimum Participation will be provided to the Settlement Contractors as a result of this transfer. **Scenario D:** If the same 10,000 a.f. of water is transferred to a non-SLDM Irrigation Water Contractor (i.e., an M&I contractor or the USBR) under any water supply scenario, the Minimum Participation will be reduced by the amount of the

Settlement Water transfer, i.e., a 10,000 a.f. reduction of the 528,000 a.f., (60% of 880,000 maximum contractual Settlement water to the Settlement Contractors) results in a Minimum Participation of 518,000 a.f.)

2. In Years when a SLDM Irrigation Water Contractor's total deliveries (i.e. deliveries under its contract with the USBR plus other deliveries made available through the Tracy PP and the DMC) are below 25 percent of its maximum contractual entitlement, the delivery base for purposes of allocating the Upper Cost Pool and Lower Cost Pool shall be 25 percent of that SLDM Irrigation Water Contractor's maximum contractual entitlement.

B. Water Transfers –A SLDM Contractor who receives transfer water (hereinafter “SLDM Transferee”) from a CVP Contractor shall have such water deliveries included in the SLDM Transferee's delivery base for each applicable cost pool described in Section I. above for purposes of allocating OM&R Costs for the Year (but not for delivery purposes in establishing reserves). As a result, all costs associated with the delivery of transferred water shall be allocated to the SLDM Transferee in the same manner as costs are allocated to the SLDM Transferee for its CVP contractual supply and shall be subject to Year end adjustment and reconciliation per Section VII.D. below.

C. Warren Act Contracts –

1. All costs associated with the conveyance of non-CVP water through Project Facilities, whether pursuant to a contract under the Warren Act , authorized pursuant to Section 3408(c) of the Central Valley Project

Improvement Act, or under other authority, shall be assigned to the SLDM Contractor that takes delivery of such water. As a result, all costs associated with the delivery of non-CVP water shall be allocated to the SLDM Contractor in the same manner as costs are allocated to that SLDM Contractor for its CVP contractual supply and shall be subject to Year end adjustment and reconciliation per Section VII.D. below. In the case of non-CVP water deliveries to the Settlement Contractors, the Settlement Contractors, not the Friant Division Contractors, will be responsible for all costs associated with the delivery of the non-CVP water, including an allocable share of the OM&R Costs and reserve costs (Section VI.D.) addressed by this SLDMWA OM&R Cost Recovery Plan.

2. Losses - A loss factor of 5 percent, or as may be provided in the Warren Act contract, shall be applied to the delivery of any non-CVP water conveyed in any Project Facilities (e.g. 100 acre feet of non-CVP water pumped at Tracy PP, or as otherwise metered, shall result in 95 acre feet being considered available for delivery and will be allocated costs accordingly).

VI. RESERVES - In recognition of the multiple year benefits of performing certain long-term OM&R activities for Project Facilities (excepting the San Luis Joint Use conveyance and conveyance pumping facilities), including, but not limited to, the long-term capital outlays for the purchase of equipment and vehicles and reserves mandated by the SLDMWA Transfer Agreement, the SLDMWA shall accumulate reserves and regularly use these reserves for these activities in accordance with the following:

- A. Annually, a Ten-Year projection of reserve expenditures will be made. The reserve expenditure projections will be discounted to arrive at a levelized annual reserve contribution. The discount rate will be determined annually based on the previous year's annualized LAIF interest rate. This annual contribution will be allocated to each SLDM Contractor pro rata based upon the past Ten-Years of historic water deliveries.
- B. Each SLDM Contractor's total Ten-Year historical deliveries will include all CVP contractual deliveries, CVP water transferred out to other SLDM Contractors and non-CVP water deliveries to that SLDM Contractor and will be subject to the inclusion of the annual Minimum Participation amounts as determined in Section V.A above. Ten-Year historical deliveries will not include CVP water transferred in by the relevant SLDM Contractor nor CVP water transferred out by the SLDM Contractor which does not utilize Project Facilities for which costs are allocated hereunder.
- C. In any one Year, reserve expenditures may benefit some facilities or cost pools more than others. However, in the long-term, it is expected that reserves will be spent generally in accordance with the overall apportionment of the OM&R budget for each facility as that facility's OM&R budget relates to the entire OM&R budget (without consideration or inclusion of the cost of energy, the OM&R Costs of the San Luis Joint Use conveyance and conveyance pumping facilities, or costs associated with the San Luis Drain).
- D. One-time or de minimis use of Project Facilities (i.e., the delivery of water under a Warren Act contract to an individual or entity that otherwise has no other water

delivery contract) will be charged an imputed rate for reserves based upon the annual reserve contribution computed in VI. A. divided by one tenth of the past 10-Years of historic deliveries computed in VI. A. Such one-time or de minimis water deliveries will not be included in any water delivery base in the determination of reserves or reserve allocation hereunder. Revenues generated to reserves for this one-time or de minimis use of Project Facilities will be used to reduce that Year's total reserve requirement. Reserve contributions from one-time or de minimis use of Project Facilities shall not be subject to annual reconciliation and adjustment.

VII. RATE COMPONENT CALCULATIONS

Rate components shall be established for each cost pool listed in Section III on a per acre foot basis. Rate components shall be calculated in accordance with the Cost Allocation to SLDM Contractors in Section IV using budgeted amounts for the Year for each cost pool divided by projected water deliveries utilizing the Project Facilities and/or energy associated with the applicable cost pool for the Year. The Reserve rate component shall be computed by dividing each SLDM Contractor's annual contribution, in accordance with Section VI. A., by projected water deliveries to that SLDM Contractor for the Year.

VIII. PAYMENT AND RECONCILIATION

- A. Amounts payable for water delivered to SLDM Contractors each calendar month shall be computed by multiplying the sum of the rate components (Rate) applicable to water deliveries by the quantity (acre feet) of such water deliveries scheduled for the month, adjusted for differences between actual and scheduled deliveries, at the applicable Rate, for prior months.

- B. The SLDMWA will bill the FWUA to provide for recovery of OM&R Costs allocated to the Settlement Contractors which are payable by the Friant Division contractors pursuant hereto.
- C. Payments due under this SLDMWA OM&R Cost Recovery Plan for water deliveries shall be made in advance. All payments must be received by the SLDMWA by the 15th of the month prior to the month of such scheduled water deliveries. Notification of electronic transfer of funds payments to the SLDMWA shall be provided in advance of or concurrent with such payment.
- D. Payments received after the due dates noted above are delinquent and shall be subject to an interest charge, as well as to any remedies for deficiencies provided in Article 11 of the SLDMWA and FWUA Transfer Agreements and IV.B. of the MOU. The interest charge shall be calculated pursuant to the Prompt Payment Act, as amended (31 USC 3901, et seq.). The interest charge will be based upon any and all accumulated advance payment deficiencies. Interest shall accrue for each day past the due date and shall be accumulated based upon a 360 day year (interest shall compound on a simple interest basis).
- E. Annual reconciliation and adjustment of the OM&R Costs and their allocation to each SLDM Contractor will be made within 90 days of the end of each Year, excepting the DWR Cost Pool and Tracy Power Cost Pool, which will be reconciled and adjusted within 90 days of when the actual costs are known.
- F. Reconciled and adjusted OM&R Cost allocations applicable to each SLDM Contractor, including annual reserve amounts, shall be compared to payments made by or on account for each SLDM Contractor for water deliveries during the

Year. In the event payments made by or on account of a SLDM Contractor exceed costs allocated to that SLDM Contractor (surplus), the SLDMWA will refund the amount of the surplus to the payee or the payee may direct the SLDMWA to apply such surplus to amounts otherwise due under this SLDMWA Cost Recovery Plan. In the event costs allocated to the SLDM Contractor exceed payments made by or on account of a SLDM Contractor (deficiency), the payee shall have 30 days from the notice of such deficiency to make payment. Payments not received within 30 days shall be subject to the late payment provision as described in Section VII. B above starting on the date of delinquency, as well as subject to any remedies for deficiencies provided in Article 11 of the SLDMWA and FWUA Transfer Agreements and IV.B. of the MOU.

- G. The SLDMWA will apply funds to cover deficiencies paid by the USBR under appropriate legal instruments in accordance with terms outlined in Section 11 of the SLDMWA Transfer Agreement.
- H. The FWUA will collect and remit payments due for OM&R Costs allocated to Settlement Contractors under this SLDMWA OM&R Cost Recovery Plan in accordance with the terms of this section. The FWUA will apply funds to cover deficiencies paid by the USBR under appropriate legal instruments in accordance with terms outlined in Section IV of the MOU and Section 11 of the FWUA Transfer Agreement.

EXHIBIT C

RESERVES

In recognition of the long term benefits associated with certain OM&R activities, expenditures meeting the criteria established below shall be made from reserve funds accumulated for such purposes.

Reserve Categories:

Extraordinary OM&R

Major non-routine maintenance improvements, modifications, replacements or repairs with long term benefits, exceeding one year, that have a total cost greater than \$20,000, including labor and labor related costs (e.g., liner replacement, structure painting, road repairs/rehab, building and structure construction and/or remodeling, pump/generator rewinds and repairs).

Equipment and Vehicles:

Mobile or stationary equipment with a purchase price exceeding \$15,000 (e.g., pumps, compressors, trailers, generators, motors, control mechanisms);

Heavy equipment with a purchase price exceeding \$20,000 (e.g., dump trucks, cranes, loaders, excavators, motor graders, forklifts, tractors, belly dumps);

Passenger/utility vehicles with a purchase price exceeding \$15,000 (e.g., sedans, pickups, utility vehicles, vans); and Office and electronic equipment and computer software with an annual aggregate purchase price exceeding \$20,000 (e.g., computers and peripherals, copiers, printers, telecommunications, radios, electronic instrumentation-excepting replacement parts, upgrades or peripherals with a purchase price of less than \$1,000, e.g., monitors, modems, keyboards, hard drives, RAM, mother boards, printer drums, repairs)

Emergency Reserves:

As mandated per Article 13 of the General Form Agreement for the Transfer of the Operation, Maintenance, and Replacement, and Certain Financial and Administrative Activities of the Delta-Mendota Canal and Related Works, between the United States Department of Interior Bureau of Reclamation and the San Luis & Delta-Mendota Water Authority.

Other:

As may be recommended for the OM&R of the Project Facilities by the Finance Committee and determined as necessary and approved by the Board of Directors of the San Luis & Delta-Mendota Water Authority

EXHIBIT D

CONTRACTOR SERVICE (DELIVERY) AREAS

| | Upper DMC | Lower DMC | Mendota Pool | San Felipe | San Luis Joint Use |
|--|--------------|--------------|-----------------|---------------|-----------------------|
| Banta-Carbona Irrigation District | ✓ | | | | |
| Centinella Water District | ✓ | | | | |
| Del Puerto Water District | ✓ | | | | |
| Patterson Water District | ✓ | | | | |
| Plain View Water District | ✓ | | | | |
| West Side Irrigation District | ✓ | | | | |
| West Stanislaus Irrigation District | ✓ | | | | |
| City of Tracy | ✓ | | | | |
| Broadview Water District | | ✓ | | | |
| Eagle Field Water District | | ✓ | | | |
| Mercy Springs Water District | | ✓ | | | |
| Oro Loma Water District | | ✓ | | | |
| Pacheco Water District | | ✓ | | | ✓ |
| Panoche Water District | | ✓ | | | ✓ |
| San Luis Water District | | ✓ | | | ✓ |
| Widren Water District | | ✓ | | | |
| Fresno Slough | | | ✓ | | |
| Hughes, M&M | | | ✓ | | |
| James Irrigation District | | | ✓ | | |
| Laguna Water District | | | ✓ | | |
| Reclamation District # 1606 | | | ✓ | | |
| Traction Ranch | | | ✓ | | |
| Tranquillity Irrigation District | | | ✓ | | |
| Westlands Water District | | | ✓ | | ✓ |
| Santa Clara Valley Water District | | | | ✓ | |
| San Benito County Water District | | | | ✓ | |
| Exchange Contractors | | | | | |
| Central California Irrigation District | ✓ | ✓ | ✓ | | |
| Firebaugh Canal Company | | ✓ | ✓ | | |
| Columbia Canal Company | | | ✓ | | |
| San Luis Canal Company | | | ✓ | | |
| | | | | | |
| City of Coalinga | | | | | ✓ |
| City of Avenal | | | | | ✓ |
| City of Huron | | | | | ✓ |
| | | | | | |
| Refuge | ✓ | ✓ | ✓ | | ✓ |