

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

CONTRACT BETWEEN THE UNITED STATES
AND
GRASSLAND WATER DISTRICT FOR WATER SUPPLY
TO LANDS WITHIN
THE GRASSLAND RESOURCE CONSERVATION DISTRICT

Table of Contents

<u>Article No.</u>		<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	1- 4
1	Definitions	4- 7
2	Term of Contract	8
3	Water to be Made Available and Delivered to the Contractor	8-11
4	Time for Delivery of Water	11-12
5	Point of Diversion, Measurement and Responsibility for Distribution of Water	12-13
6	Pooling of Water Supplies	13-14
7	Transfers, Reallocations or Exchanges of Water	14
8	Temporary Reductions–Return Flows	14-15
9	Water Shortage and Apportionment	15-16
10	Rules and Regulations	16
11	Water and Air Pollution Control	16
12	Quality of Water	17-18
13	Use of Non–Project Facilities for Water Delivery	18
14	Opinions and Determinations	18-19
15	Equal Opportunity	19-20
16	Compliance with Civil Rights Laws and Regulations	20-21
17	Water Conservation	21-23
18	Existing or Acquired Water or Water Rights	23
19	Contingent on Appropriation or Allotment of Funds	24
20	Books, Records, and Reports	24

<u>Article No.</u>		<u>Page No.</u>
21	Assignment Limited–Successors and Assigns Obligated	24-25
22	Liability	25
23	Officials Not to Benefit	25
24	Certification of Nonsegregated Facilities	26
25	Federal Laws	26
26	Notices	27
	Signature Page	28
	Exhibit A	
	Exhibit B	

1
2
3
4 UNITED STATES
5 DEPARTMENT OF THE INTERIOR
6 BUREAU OF RECLAMATION
7 Central Valley Project, California

8 CONTRACT BETWEEN THE UNITED STATES
9 AND
10 GRASSLAND WATER DISTRICT FOR WATER SUPPLY
11 TO LANDS WITHIN
12 THE GRASSLAND RESOURCE CONSERVATION DISTRICT

13 THIS CONTRACT, made this 19 day of January, 2001, in
14 pursuance generally of the Act of June 17, 1902 (32 Stat. 388) as amended and supplemented; the Act
15 of August 27, 1954 (68 Stat. 879), as amended by the Act of November 8, 1978 (92 Stat. 3110, the
16 Act of October 27, 1986 (100 Stat. 3050), and in particular Section 3406(d) of the Central Valley
17 Project Improvement Act (CVPIA), Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706) all
18 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF
19 AMERICA, represented by the Secretary of the Interior’s duly authorized representative acting
20 pursuant to this Contract, hereinafter referred to as the Contracting Officer, and Grassland Water
21 District, hereinafter referred to as the Contractor, a public agency of the State of California, duly
22 organized, existing, and acting pursuant to the laws thereof, with its principal place of business in Los
23 Banos, California;

24 WITNESSETH, That:

25 EXPLANATORY RECITALS

26 WHEREAS, the United States has constructed and is operating the Central Valley

27 Project, California (Project), for diversion, storage, carriage, and distribution of the waters of the
28 Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries
29 for the following beneficial uses, including, but not limited to, flood control, irrigation, municipal,
30 domestic, industrial water service, the protection, restoration and enhancement of fish, and wildlife, and
31 associated habitats in the Central Valley, the generation and distribution of electric energy, salinity
32 control, and navigation; and

33 WHEREAS, the wetlands of the Central Valley have declined to approximately
34 300,000 acres and these remaining wetlands provide critical wildlife habitat and other environmental
35 benefits, and important recreational and educational opportunities; and

36 WHEREAS, the Bureau of Reclamation’s 1989 Refuge Water Supply Report
37 concluded that “... it is clear that each refuge requires a dependable supply of good quality water to
38 facilitate proper wetland habitat management for the migratory birds of the Pacific Flyway and resident
39 wildlife and flora.”; and

40 WHEREAS, Section 3406(d) of the CVPIA requires the Secretary to provide firm
41 water supplies of suitable quality, through long-term contractual agreements with appropriate parties, to
42 maintain and improve certain wetland habitat areas in the Central Valley
43 in furtherance of the objectives of the Central Valley Habitat Joint Venture and the Central Valley
44 Project to protect, restore and enhance fish and wildlife and associated habitats; and

45 WHEREAS, the directives of Section 3406(d) of the CVPIA have been carried out
46 through a cooperative and collaborative effort between the Bureau of Reclamation and Fish and
47 Wildlife Service, acting for the Secretary of the Interior, the California Department of Fish and Game,

48 the Grassland Water District, and the Central Valley Habitat Joint Venture partners; and this
49 cooperative and collaborative effort is expected to continue; and

50 WHEREAS, the Contracting Officer has determined that the Grassland Water District
51 is the appropriate party to enter into a long-term contract to provide the firm water supplies allocated to
52 lands within the Grassland Resource Conservation District; and

53 WHEREAS, the Contracting Officer intends to use Project facilities, in part, to provide
54 firm water supplies of suitable quality to maintain and improve the Refuges; and

55 WHEREAS, the parties to this Contract have entered into contract No. 14-06-200-
56 6106, dated September 13, 1956 and contract No. 14-06-200-3447A, dated August 4, 1967
57 pursuant to Federal Reclamation law, which require that the Contracting Officer make available
58 specified quantities of Project Water to the Contractor under terms and conditions set forth in such
59 contracts as supplemented by the additional terms and conditions set forth in contract No. 14-06-200-
60 4658A, dated December 27, 1969, as amended on December 6, 1980; and

61 WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
62 Officer that the Contractor has fully utilized the Central Valley Project water supplies available to it for
63 reasonable and beneficial use for fish and wildlife preservation and enhancement (wetland management)
64 and/or the Contracting Officer has concluded through the Bureau of Reclamation's 1989 Refuge Water
65 Supply Report and the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report that
66 the Contractor has projected future demand for water use such that the Contractor has the capability
67 and expects to fully utilize for reasonable and beneficial use the quantity of water to be made available
68 to it pursuant to this Contract; and

69 WHEREAS, the Contracting Officer and the Contractor are willing to execute
70 this Contract pursuant to subsection 3406(d) of the CVPIA on the terms and conditions set forth
71 below;

72 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
73 contained, it is hereby mutually agreed by the parties hereto as follows:

74 DEFINITIONS

75 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible
76 with the intent of the parties or expressed in this contract, the term:

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

79 (b) "Contractor's Boundary" shall mean the Refuge(s) to which the Contractor is
80 permitted to provide Delivered Water under this contract as identified in Exhibit "A". Exhibit "A" may
81 be revised without amending this Contract upon mutual agreement of the Contractor and the
82 Contracting Officer;

83 (c) "Contracting Officer" shall mean the Secretary of the Interior's duly authorized
84 representative acting pursuant to this Contract;

85 (d) "Critically Dry Year" shall mean any Year in which either of the following
86 eventualities exists:

87 (1) The forecasted full natural inflow to Shasta Lake for the current water
88 year (October 1 of the preceding Calendar Year through September 30 of the current Calendar Year),
89 as such forecast is made by the Contracting Officer, on or before February 20, and reviewed as

90 frequently thereafter as conditions and information warrant, is equal to or less than 3,200,000 acre feet:
91 or

92 (2) The total accumulated actual deficiencies below 4,000,000 acre-feet in
93 the immediately prior water year or series of successive prior water years, each of which had inflows of
94 less than 4,000,000 acre-feet, together with the forecasted deficiency for the current water year exceed
95 800,000 acre-feet;

96 For the purpose of determining a Critically Dry Year, the computed inflow to
97 Shasta Lake under present upstream development above Shasta Lake shall be used as the full natural
98 inflow to Shasta Lake. In the event that major construction completed above Shasta Lake materially
99 alters the present regimen of the stream systems contributing to Shasta Lake, the computed inflow to
100 Shasta Lake used to define a Critically Dry Year will be adjusted to eliminate the effect of such material
101 alterations.

102 After consultation with the State, the National Weather Service, and other
103 recognized forecasting agencies, the Contracting Officer shall select the forecast to be used and will
104 make the details of it available to the Contractor. The same forecast used by the Contracting Officer for
105 operation of the Project shall be used to make forecasts hereunder.

106 (e) "CVPIA" shall mean the Central Valley Project Improvement
107 Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

108 (f) "Delivered Water" shall mean the Level 2 Water Supplies and the Incremental
109 Level 4 Water Supplies diverted by the Contractor pursuant to this Contract at the Point(s) of Delivery
110 in accordance with Article 4(c) of this Contract;

111 (g) “Hydrologic Circumstances” shall mean the conditions described in subdivision
112 (d) of this Article;

113 (h) “Incremental Level 4 Water Supplies” shall mean the difference between the
114 Level 2 Water Supplies and the Level 4 Water Supplies depicted in Exhibit “B”;

115 (i) "Level 2 Water Supplies" shall mean the quantities of water referred to in
116 section 3406 (d)(1) of the CVPIA and depicted in Exhibit “B” of this Contract;

117 (j) “Level 4 Water Supplies” shall mean the quantities of water referred to in
118 section 3406 (d)(2) of the CVPIA and depicted in Exhibit “B” of this Contract;

119 (k) “Non-Project Facilities” shall mean any non-Project water conveyance or storage
120 facilities;

121 (l) “Non-Project Water” shall mean water or water rights, other than “Project
122 Water”, acquired, appropriated by, transferred to or assigned to the Contractor or, transferred to the
123 United States for delivery to one or more of the Contractor’s Refuges, as identified in Exhibit “B”;

124 (m) “Point(s) of Delivery” shall mean the location(s) established and revised
125 pursuant to Article 5(a) of this Contract , at which Level 2 Water Supplies of Project Water and
126 Incremental Level 4 Water Supplies are deemed to be delivered to the Contractor and at which the
127 Contractor shall assume the responsibility for the further control, carriage, handling, use, disposal or
128 distribution of such water supplies so long as such water supplies are being used in accordance with the
129 terms and conditions of this Contract;

130 (n) “Project” shall mean the Central Valley Project owned by the United States
131 and managed by the Department of the Interior, Bureau of Reclamation;

132 (o) "Project Water" shall mean all water that is developed, diverted, stored, or
133 delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in
134 accordance with the terms and conditions of applicable water rights acquired pursuant to California
135 law;

136 (p) "Refuge(s)" shall mean the lands in the units of the National Wildlife Refuge
137 System in the Central Valley of California; Gray Lodge, Los Banos, Volta, North Grasslands and
138 Mendota state wildlife management areas; and the Grassland Resource Conservation District all
139 identified in the Refuge Water Supply Report and the land(s) identified in the San Joaquin Basin Action
140 Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation as set forth in
141 Section 3406(d) of the CVPIA and/or as amended in accordance with subdivision (b) of this Article;

142 (q) "Refuge Water Supply Report" shall mean the report issued by the Mid-Pacific
143 Region of the Bureau of Reclamation of the United States Department of the Interior entitled "Report
144 on Refuge Water Supply Investigations, Central Valley Hydrologic Basin, California" (March 1989);

145 (r) "Secretary" shall mean the Secretary of the Interior, a duly appointed
146 successor, or an authorized representative acting pursuant to any authority of the Secretary through any
147 agency of the Department of the Interior;

148 (s) "Year" shall mean the period from and including March 1 of
149 each Calendar Year through the last day of February of the following Calendar Year;

150 TERM OF CONTRACT

151 2. (a) This contract shall be effective on March 1, 2001 and shall remain in effect
152 through February 28, 2026.

153 (b) Upon request by the Contractor, this Contract shall be renewed for successive periods
154 of twenty-five (25) years each, subject to the terms and conditions mutually agreeable to the parties.
155 The Contractor shall request renewal of the Contract at least two (2) years prior to the date on which
156 this Contract expires.

157 (c) So long as this Contract, or a renewal of this Contract pursuant to Article 2(b) of this
158 Contract, is in effect, the contracts referred to in the eighth Explanatory Recital of this Contract, shall be
159 suspended and shall be of no force or effect.

160 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

161 3. (a) During each Year, consistent with State water rights, permits and licenses,
162 federal law, and subject to the provisions set forth in Articles 8 and 9 of this Contract, the Contracting
163 Officer shall, at the established Point(s) of Delivery, make available and/or convey to the Contractor the
164 maximum quantities of Project Water and Non-Project Water, respectively, required to provide each
165 of the Refuges with the Level 2 Water Supplies set forth in Exhibit “B” and the Incremental Level 4
166 Water Supplies set forth in Exhibit “B”. The quantities of Level 2 Water Supplies and Incremental
167 Level 4 Water Supplies made available and/or conveyed to the Contractor shall be scheduled in
168 accordance with the provisions of Article 4 of this Contract; Provided, that in light of the fact that,
169 Section 3406(d)(2) of the CVPIA provides that the Incremental Level 4 Water Supplies shall be
170 acquired in cooperation with the State of California and in consultation with the Central Valley Habitat
171 Joint Venture and other interests in cumulating increments of not less than ten percent per annum, from

172 the date the CVPIA was enacted, through voluntary measures which include, but are not limited to,
173 water conservation, conjunctive use, purchase, lease, donations, or similar activities, or a combination
174 of such activities which do not require involuntary reallocation of Project yield, water being provided as
175 all or part of the Incremental Level 4 Water Supplies for each of the Refuges can be made available
176 only to the extent that the Contracting Officer is able to acquire the Incremental Level 4 Water Supplies
177 from willing sources; Accordingly, the Contracting Officer shall use his/her best efforts to acquire the
178 Incremental Level 4 Water Supplies and shall coordinate acquisitions of Level 4 Water Supplies with
179 acquisitions of Environmental Water Account (EWA) water pursuant to the Operating Principles
180 Agreement, dated August 28,2000 attached to the Record of Decision for the CALFED Bay-Delta
181 Program, dated August 28, 2000 and/or other acquisitions of water for environmental purposes to
182 ensure that acquisitions of Incremental Level 4 Water Supplies have a priority at least equal to
183 acquisitions of EWA and/or other environmental water each Year. The Contracting Officer also agrees
184 that the Interagency Refuge Management Team, created pursuant to Article 6 of this Contract, shall be
185 included among the interests consulted in acquiring Incremental Level 4 Water Supplies.

186 (b) Omitted from this Contract.

187 (c) The Contractor shall comply with requirements applicable to the Contractor in
188 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
189 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within
190 the Contractor's legal authority to implement. The Contractor shall comply with the limitations or
191 requirements imposed by environmental documentation applicable to the Contractor and within its legal
192 authority to implement. Nothing herein shall be construed to prevent the Contractor from challenging or

193 seeking judicial relief in a court of competent jurisdiction with respect to any Biological Opinion or other
194 environmental documentation referred to in this Article.

195 (d) The Contractor shall make reasonable and beneficial use of all Delivered
196 Water furnished pursuant to this Contract consistent with the wetland habitat water management plan(s)
197 described in Article 17 of this Contract.

198 (e) In order to maximize water available to Refuges and better manage such water,
199 the Contractor may request the Contracting Officer's permission to reschedule a portion of the Level 2
200 Water Supplies and/or a portion of the Incremental Level 4 Water Supplies made available to the
201 Contractor for use within the Contractor's Boundary during the current Year for use within the
202 subsequent Year. The Contracting Officer may permit such rescheduling in accordance with applicable
203 law, and the then-current applicable rescheduling guidelines and policies. Upon execution of this
204 Contract, the Contracting Officer shall have adopted amendments to any applicable rescheduling
205 guidelines and policies to provide for the rescheduling of refuge water in accordance with this Article.
206 After execution of this Contract and annually thereafter, the Contracting Officer shall provide the
207 Contractor with a copy of the then-current rescheduling guidelines and policies.

208 (f) The Contracting Officer shall not interfere with the Contractor's right pursuant
209 to Federal Reclamation law and applicable California law to the beneficial use of water furnished
210 pursuant to this Contract so long as the Contractor fulfills all of its obligations under this Contract. A
211 reduction in water supplies pursuant to Article 9 of this Contract shall not be deemed to constitute such
212 interference.

213 TIME FOR DELIVERY OF WATER

214 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
215 provide the Contractor, in writing, with a preliminary forecast of whether the upcoming Year will be a
216 Critically Dry Year; and, if a Critically Dry Year is forecast, the extent to which Level 2 Water Supplies
217 to be made available to the Contractor during the upcoming Year are to be shorted pursuant to Article
218 9 of this Contract; and the amount of Incremental Level 4 Water Supplies estimated to be made
219 available to the Contractor pursuant to this Contract for the upcoming Year. The forecast will be
220 updated monthly, as necessary, based on then-current hydrologic conditions. Upon the request of the
221 Contractor, the Contracting Officer shall make available to the Contractor the data on which the
222 Contracting Officer relied to determine whether the Year in question will or will not be a Critically Dry
223 Year and to determine the amounts of Level 2 Water Supplies and Incremental Level 4 Water Supplies
224 to be made available to the Contractor pursuant to this Contract during a Critically Dry Year.

225 (b) Based on the forecast(s) referred to in subdivision (a) of this Article, on or before
226 March 1 of each Calendar Year, the Contractor shall submit to the Contracting Officer a written
227 schedule, satisfactory to the Contracting Officer, showing both the monthly and annual quantities of
228 Level 2 Water Supplies and Incremental Level 4 Water Supplies to be delivered by the Contracting
229 Officer to each of the Refuges pursuant to this Contract. Each schedule shall be updated on a monthly
230 basis to reflect actual use and remaining estimated needs.

231 (c) In accordance with subdivision (a) of Article 3 of this Contract, the Contracting Officer
232 shall make available and/or convey Level 2 Water Supplies and Incremental Level 4 Water Supplies
233 for diversion by the Contractor at the Points of Delivery in accordance with the schedule submitted by
234 the Contractor pursuant to subdivision (b) of this Article, or any written revision(s) thereto, mutually

235 agreed to by the Contracting Officer and the Contractor which are submitted to the Contracting Officer
236 within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

237 POINT OF DIVERSION, MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION
238 OF WATER

239 5. (a) The original Point(s) of Delivery shall be established by written mutual
240 agreement of the Contractor and the Contracting Officer. Such Point(s) of Delivery may be revised
241 without amending this Contract upon written mutual agreement of the Contracting Officer and the
242 Contractor.

243 (b) All water delivered to the Contractor pursuant to this Contract is to be
244 measured at the Point(s) of Delivery to reflect the quantities of Level 2 Water Supplies and Incremental
245 Level 4 Water Supplies delivered to the Contractor's Boundary. Upon the request of the Contractor or
246 on the Contracting Officer's own initiative, the Contracting Officer shall investigate the accuracy of such
247 measurements and the parties will jointly take any necessary steps to adjust any errors appearing
248 therein. For any period of time when accurate measurement has not been made, the Contracting
249 Officer shall consult with the Contractor prior to making a determination of the quantity of Delivered
250 Water for that period of time. The Contractor shall advise the Contracting Officer on or before the 10th
251 calendar day of each month of the quantities of Level 2 Water Supplies and Incremental Level 4 Water
252 Supplies taken during the preceding month at the Point(s) of Delivery.

253 (c) The Contracting Officer shall not be responsible for the control, carriage,
254 handling, use, disposal, or distribution of water delivered to the Contractor pursuant to this Contract
255 beyond the Point(s) of Delivery specified in subdivision (a) of this Article.

POOLING OF WATER SUPPLIES

256
257 6. (a) Whenever the maximum quantities of Level 2 Water Supplies and/or the
258 Incremental Level 4 Water Supplies depicted in Exhibit “B” are reduced pursuant to Article 9 of this
259 Contract, the remaining Level 2 Water Supplies and/or the Incremental Level 4 Water Supplies may be
260 pooled for use on other Refuge(s); Provided, that no individual Refuge shall receive more Level 2
261 Water Supplies than would have been made available to it absent a reduction pursuant to Article 9 of
262 this Contract; or be reduced by more than twenty-five (25) percent; Provided further, that the
263 Contracting Officer makes a written determination that pooling of water for use on other Refuge(s)
264 would not have an adverse impact, that cannot be reasonably mitigated, on Project operations, other
265 Project Contractors, or other Project purposes; Provided further, that the Contracting Officer
266 determines that such reallocation is permitted under the terms and conditions of the applicable
267 underlying water right permit and/or license; and Provided still further, that water made available under
268 this contract may not be scheduled for delivery outside the Contractor’s Boundary without prior
269 written approval of the Contracting Officer.

270 (b) An Interagency Refuge Water Management Team, to be chaired by the Contracting
271 Officer and to be established upon execution of this Contract, shall be entitled to collaboratively
272 allocate the pooled water supplies and provide a schedule for delivery of the pooled supplies to meet
273 the highest priority needs of the Refuge(s) as depicted in Exhibit “B”; Provided, however, nothing in this
274 Article is intended to require the Contractor to pool the water supply provided for in this Contract. The
275 Interagency Refuge Water Management Team shall be composed of designees of the Bureau of
276 Reclamation, the United States Fish and Wildlife Service, the California Department of Fish and Game,

277 and the Grassland Water District.

278 TRANSFERS, REALLOCATIONS OR EXCHANGES OF WATER

279 7. Subject to the prior written approval of the Contracting Officer, the Project Water made
280 available under this Contract may be transferred, reallocated or exchanged in that Year to other
281 Refuge(s) or Project contractors if such transfer, reallocation or exchange is requested by the
282 Contractor and is authorized by applicable Federal and California State laws, and then-current
283 applicable guidelines or regulations.

284 TEMPORARY REDUCTIONS--RETURN FLOWS

285 8. (a) Consistent with the authorized purposes and priorities of the Project and the
286 requirements of Federal law, the Contracting Officer shall make all reasonable efforts to optimize water
287 deliveries to the Contractor as provided in this Contract.

288 (b) The quantity of water to be delivered to the Contractor as herein provided may
289 be temporarily discontinued or reduced when investigation, inspection, maintenance, repair, or
290 replacement of any of the Project facilities and/or Non-Project Facilities or any part thereof necessary
291 for the delivery of water to the Contractor is required. The Contracting Officer shall give and/or arrange
292 to have the owner/operator of Non-Project Facilities give the Contractor due written notice in advance
293 of such temporary discontinuance or reduction, except in case of an emergency, when no advance
294 notice is possible, in which case the Contracting Officer shall notify and/or arrange to have the
295 owner/operator of the Non-Project Facilities notify the Contractor of said discontinuance or reduction
296 as soon as is feasible; Provided, that the Contracting Officer shall use its best efforts to avoid any
297 discontinuance or reduction in such service. Upon resumption of service after such reduction or

298 discontinuance, and if requested by the Contractor, the Contracting Officer will make all reasonable
299 efforts, consistent with other obligations and operational constraints, to deliver the quantity of water
300 which would have been delivered hereunder in the absence of such discontinuance or reduction.

301 (c) The United States reserves the right to all seepage and return flow water
302 derived from Delivered Water which escapes or is discharged beyond the Contractor's Boundary;
303 Provided, that this shall not be construed as claiming for the United States any right to seepage or return
304 flow being put to beneficial use pursuant to this contract within the Contractor's Boundary by the
305 Contractor or those claiming by, through, or under the Contractor.

306 WATER SHORTAGE AND APPORTIONMENT

307 9. (a) In a Critically Dry Year, the Contracting Officer may temporarily reduce, for
308 that Year, the availability of Level 2 Water Supplies up to twenty-five (25) percent of the maximum
309 quantities set forth in Exhibit "B" whenever reductions due to Hydrologic Circumstances are imposed
310 upon agricultural deliveries of Project Water; Provided, that such reductions shall not exceed in
311 percentage terms the reductions imposed on agricultural service contractors. The quantity of Non-
312 Project Water available to one or more of the Refuges as part of its/their Level 2 Water Supplies may
313 be reduced by more than twenty-five (25) percent in Years when the quantity of Project Water made
314 available to the Contractor can be reduced by no more than twenty-five (25) percent. In such cases,
315 the Contracting Officer shall make up the supply difference with water supplies provided by the
316 Contracting Officer to ensure that Level 2 Water Supplies from all sources are not reduced by more
317 than twenty-five (25) percent.

318 (b) Reductions in the Level 2 Water Supplies to be made available to the individual

319 Refuge(s) pursuant to this Contract, shall be imposed only in a Critically Dry Year. For the Incremental
320 Level 4 Water Supplies provided from Non-Project Water and Project Water, reductions shall be
321 imposed in accordance with the priority or priorities that were applied to such Non-Project Water and
322 the shortages assigned to Project Water prior to its transfer or acquisition as Incremental Level 4 Water
323 Supplies.

324 RULES AND REGULATIONS

325 10. The parties agree that the delivery of water pursuant to this Contract is subject to
326 Federal Reclamation law, as may be amended and supplemented, as applicable, and the rules and
327 regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

328 WATER AND AIR POLLUTION CONTROL

329 11. The Contractor, in carrying out this contract, shall comply with all applicable water and
330 air pollution laws and regulations of the United States and the State of California, and shall obtain all
331 required permits or licenses from the appropriate Federal, State, or local authorities.

332 QUALITY OF WATER

333 12. (a) Consistent with other legal obligations, the water delivered by the Contracting
334 Officer to the Contractor pursuant to this Contract shall be of suitable quality to maintain and improve
335 wetland habitat areas and of comparable quality to water provided to other Project purposes within the
336 same geographical areas; Provided, that the Contracting Officer is under no obligation to construct or
337 furnish water treatment facilities to maintain or to improve the quality of the water furnished to the
338 Contractor pursuant to this contract. The quality of Delivered Water may be monitored by the
339 Contractor at the Point(s) of Delivery on an as needed basis. Should the Contracting Officer, in

340 consultation with the Contractor, determine that the Level 2 Water Supplies and/or the Level 4 Water
341 Supplies to be made available to the Contractor pursuant to this Contract during all or any part of a
342 Year will not be of the quality that the Contractor feels is suitable to maintain and improve wetland
343 habitat areas, the Contractor and the Contracting Officer shall meet within 48 hours or at a time
344 mutually agreeable to the parties and determine the appropriate actions necessary to identify and
345 address the source of the water quality problems.

346 (b) The operation and maintenance of Project facilities shall be performed in such
347 manner as is practicable to maintain the quality of raw water made available through such facilities at the
348 highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
349 responsible for compliance with all State of California and Federal water quality standards and
350 directives applicable to surface return flows and subsurface agricultural drainage discharges generated
351 within its boundaries arising from water conveyed to the Refuges pursuant to this Contract. This
352 Contract does not create any obligation on the Contracting Officer to provide drainage services.

353 USE OF NON-PROJECT FACILITIES FOR WATER DELIVERY

354 13. Any use of Non-Project Facilities, including use of State Water Project facilities pursuant
355 to Joint Point of Diversion or other use of State Water Project facilities to deliver the water supplies
356 provided for in the Contract, or any agreement for the use of such Non-Project Facilities, shall in no
357 way alter the obligation of the Contracting Officer to make available and deliver water supplies in
358 accordance with all of the terms and conditions of this Contract. In addition, any costs incurred in the
359 use of Non-Project Facilities to deliver water supplies pursuant to this Contract shall be paid for in
360 accordance with Section 3406(d)(3) of the CVPIA.

361 OPINIONS AND DETERMINATIONS

362 14. (a) Where the terms of this Contract provide for actions to be based upon the
363 opinion or determination of either party to this Contract, said terms shall not be construed as permitting
364 such action to be predicated upon opinions or determinations that are arbitrary, capricious or
365 unreasonable. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the
366 right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable
367 opinion or determination. Each opinion or determination by either party shall be provided in a timely
368 manner. Nothing in this subdivision of this Article is intended to or shall affect or alter the standard of
369 judicial review applicable under federal law to any opinion or determination implementing a specific
370 provision of federal law embodied in statute or regulation.

371 (b) Both parties to this Contract shall have the right to make determinations
372 necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of
373 the United States and of California, and the rules and regulations promulgated by the Secretary of the
374 Interior. Each party shall make such determinations in consultation with the other party to the extent
375 reasonably practicable.

376 EQUAL OPPORTUNITY

377 15. During the performance of this contract, the Contractor agrees as follows:

378 (a) The Contractor will not discriminate against any employee or applicant for
379 employment because of race, color, religion, sex, or national origin. The Contractor will take
380 affirmative action to ensure that applicants are employed, and that employees are treated during
381 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
382 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment
383 or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and
384 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places,

385 available to employees and applicants for employment, notices to be provided by the Contracting
386 Officer setting forth the provisions of this nondiscrimination clause.

387 (b) The Contractor will, in all solicitations or advertisements for employees placed
388 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for
389 employment without discrimination because of race, color, religion, sex, or national origin.

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

396 (d) The Contractor will comply with all provisions of Executive Order No. 11246
397 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary
398 of Labor.

399 (e) The Contractor will furnish all information and reports required by said
400 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
401 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
402 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
403 regulations, and orders.

404 (f) In the event of the Contractor's noncompliance with the nondiscrimination
405 clauses of this contract or with any of the said rules, regulations, or orders, this contract may be
406 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
407 for further Government contracts in accordance with procedures authorized in said amended Executive
408 Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive
409 Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

410 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
411 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
412 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
413 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
414 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
415 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in
416 the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or
417 vendor as a result of such direction, the Contractor may request the United States to enter into such
418 litigation to protect the interests of the United States.

419 COMPLIANCE WITH CIVIL RIGHTS LAWS
420 AND REGULATIONS

421 16. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
422 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
423 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well
424 as with their respective implementing regulations and guidelines imposed by the U.S. Department of the
425 Interior and/or Bureau of Reclamation.

426 (b) These statutes require that no person in the United States shall, on the grounds
427 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
428 benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial
429 assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to
430 immediately take any measures necessary to implement this obligation, including permitting officials of
431 the United States to inspect premises, programs, and documents.

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

439 WATER CONSERVATION

440 17. (a) The Contractor shall prepare individual refuge wetland habitat water
441 management plan(s) in order to ensure the effective use of water supplies to meet wetland resource
442 needs and to meet the objectives of the Central Valley Habitat Joint Venture and the purposes of the
443 CVPIA to maintain and improve certain Central Valley wetland habitat areas. Criteria to prepare and
444 evaluate refuge wetland habitat water management plan(s) shall be developed by the Interagency
445 Refuge Water Management Team within one (1) year of the execution of this Contract, and reviewed
446 and updated every five (5) years thereafter taking into consideration the provisions of the Interagency
447 Coordinated Program Task Force report dated June 1998. The criteria shall include economically

448 feasible water management measures which can improve the Contractors' efficient use of water in a
449 manner appropriate for wetland and wildlife management, and shall also include time schedules for
450 meeting the water use efficiency and conservation objectives. The criteria shall grant substantial
451 deference to on-going state efforts related to wetlands water management and shall take into account
452 the unique requirements associated with water use for the maintenance and enhancement of wetland
453 and wildlife habitat. The Contractor shall make all reasonable efforts, consistent with appropriate
454 limitations recognized in Article 19 of this Contract, to complete the original wetland habitat water
455 management plan(s) within one (1) year of the establishment of the criteria. The Contracting Officer will
456 review and determine if the wetland habitat water management plan(s) meet the established criteria for
457 evaluating said plan within ninety (90) days of receipt of each plan.

458 (b) Prior to the Contractor being afforded opportunities such as pooling
459 and rescheduling of water supplies pursuant to Articles 3 and 6 of this Contract, the Contractor must
460 be implementing a wetland habitat water management plan that has been determined by the Contracting
461 Officer to meet the established criteria developed pursuant to subdivision (a) of this Article for
462 preparing and evaluating said plan. Continued pooling and rescheduling benefits pursuant to Articles 3
463 and 6 of this Contract shall be contingent upon the Contractor's continued implementation of such
464 wetland habitat water management plans. In the event the Contracting Officer determines the
465 Contractor is unable to implement its wetland habitat water management plan, due to circumstances
466 beyond its control, the pooling and rescheduling benefits of Articles 3 and 6 of this Contract shall be
467 continued so long as the Contractor diligently works with the Contracting Officer to obtain such
468 determination at the earliest practicable date and thereafter the Contractor begins implementing its

469 wetland habitat water management plan immediately after the circumstances preventing implementation
470 have ceased.

471 (c) In the event that implementation of the wetland habitat water management
472 plan(s) prepared pursuant to subdivision (a) of this Article results in water savings, all conserved water
473 supplies may be transferred/reallocated, under the terms and conditions of this Contract, to other
474 wetland, wildlife and fishery needs or to other Project contractors in accordance with the
475 recommendations of the Interagency Refuge Water Management Team established pursuant to Article
476 6 of this Contract; Provided, that the Contracting Officer makes a written determination that such
477 transfer/reallocation of conserved water would not have an adverse impact, that cannot be reasonably
478 mitigated, on Project operations, other Project contractors or other Project purposes; Provided further,
479 that the transfer/reallocation is requested by the Contractor and the Contracting Officer determines that
480 the transfer/reallocation is authorized by applicable laws, and then-current applicable guidelines and/or
481 regulations.

482 (d) The Contractor shall submit to the Contracting Officer an annual update on the
483 status of its implementation of the wetland habitat water management plan(s) for the previous Water
484 Year.

485 (e) At five (5) year intervals, the Contractor shall revise its wetland habitat water
486 management plan(s), as necessary, to reflect the then-current criteria for preparing and evaluating said
487 plans and submit such revised plan(s). Upon completion of such revised plan(s), the Contractor shall
488 submit such revised plan(s) to the Contracting Officer for review and so the Contracting Officer can
489 determine whether such plan(s) meet the then-current criteria.

490 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

491 18. Except as provided in subdivision (b) of Article 3, the exercise of existing water rights by
492 the Contractor, or its acquisition of additional water or water rights from other than the United States,
493 shall not alter the obligation of the Contracting Officer to provide the maximum quantities of Level 2
494 Water Supplies and Incremental Level 4 Water Supplies under subdivision (a) of Article 3 of this
495 Contract.

496 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

497 19. The expenditure or advance of any money or the performance of any obligation of the
498 United States under this contract shall be contingent upon appropriation or allotment of funds. Absence
499 of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this
500 contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

501 BOOKS, RECORDS, AND REPORTS

502 20. (a) The Contractor shall establish and maintain accounts and other books and
503 records pertaining to administration of the terms and conditions of this contract, including: the
504 Contractor's financial transactions, water supply data, and right-of-way agreements; and other matters
505 that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer
506 in such form and on such date or dates as the Contracting Officer may require. Subject to applicable
507 Federal laws and regulations, each party to this contract shall have the right during office hours to
508 examine and make copies of the other party's books and records relating to matters covered by this
509 contract.

510 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records, or
511 other information shall be requested from the Contractor by the Contracting Officer unless such books,
512 records, or information are reasonably related to the administration or performance of this Contract.
513 Any such request shall allow the Contractor a reasonable period of time within which to provide the

514 requested books, records, or information.

515 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

516 21. (a) The provisions of this contract shall apply to and bind the successors and
517 assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein
518 shall be valid until approved in writing by the Contracting Officer.

519 (b) The assignment of any right or interest in this contract by either party shall not
520 interfere with the rights or obligations of the other party to this contract absent the written concurrence
521 of said other party.

522 (c) The Contracting Officer shall not unreasonably condition or withhold his/her
523 approval of any proposed assignment.

524 LIABILITY

525 22. (a) The Contractor shall not assert that the United States, its officers, agents and
526 employees are responsible for legal liability for damages of any nature whatsoever arising out of any
527 actions or omissions by the Contractor, its officers, agents and employees in the performance of this
528 Contract.

529 (b) The United States shall not assert that the Contractor, its officers, agents and
530 employees are responsible for legal liability for damages of any nature whatsoever arising out of any
531 actions or omissions by the United States, its officers, agents and employees in the performance of this
532 Contract.

533 (c) Within thirty (30) days of receipt by either party of any claim for liability arising
534 from actions within the scope of this Contract, the party receiving the claim shall notify the other party
535 of such claim and provide a copy of the claim to the other party, if it is in written form. Nothing in this

536 Article shall be construed to limit the right of either party to assert such affirmative defenses and file
537 such cross complaints as may be appropriate in relation to any claim affecting the liability of such party.

538 OFFICIALS NOT TO BENEFIT

539 23. No Member of or Delegate to Congress, Resident Commissioner, or official of the
540 Contractor shall benefit from this contract.

541 CERTIFICATION OF NONSEGREGATED FACILITIES

542 24. The Contractor hereby certifies that it does not maintain or provide for its employees
543 any segregated facilities at any of its establishments, and that it does not permit its employees to
544 perform their services at any location, under its control, where segregated facilities are maintained. It
545 certifies further that it will not maintain or provide for its employees any segregated facilities at any of its
546 establishments, and that it will not permit its employees to perform their services at any location, under
547 its control, where segregated facilities are maintained. The Contractor agrees that a breach of this
548 certification is a violation of the Equal Opportunity clause in this contract. As used in this certification,
549 the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms,
550 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
551 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities
552 provided for employees which are segregated by explicit directive or are in fact segregated on the basis
553 of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor
554 further agrees that (except where it has obtained identical certifications from proposed subcontractors
555 for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the
556 award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal
557 Opportunity clause; that it will retain such certifications in its files; and that it will forward the following
558 notice to such proposed subcontractors (except where the proposed subcontractors have submitted
559 identical certifications for specific periods):

560 FEDERAL LAWS

561 25. By entering into this Contract, the Contractor does not waive its rights to contest the
562 validity or application of, or compliance with, any federal law or regulation in connection with the
563 performance of the terms and conditions of this Contract , nor does the Contractor waive any rights it

564 may have to seek enforcement of obligations of the Secretary to provide water supplies to the
565 Contractor under federal law independent of this Contract; Provided, that the Contractor agrees to
566 comply with the terms and conditions of this Contract unless and until relief from or compliance with
567 application of such Federal law or regulation to the implementing provision of the Contract is granted by
568 a court of competent jurisdiction.

569

NOTICES

570 26. Any notice, demand, or request authorized or required by this contract shall be deemed
571 to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the
572 Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 97321-1813, and
573 on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of
574 the Grassland Water District, 22759 South Mercey Springs Road, Los Banos CA 93635. The
575 designation of the addressee or the address may be changed by notice given in the same manner as
576 provided in this Article for other notices.

577 IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and
578 year first above written.

579 THE UNITED STATES OF AMERICA

580 By: /s/ Lester Snow
581 APPROVED AS LEGAL Regional Director, Mid-Pacific Region
582 FORM AND SUFFICIENCY Bureau of Reclamation

583 /s/ James E. Turner
584 OFFICE OF REGIONAL SOLICITOR
585 DEPARTMENT OF THE INTERIOR

586 (SEAL) GRASSLAND WATER DISTRICT

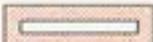
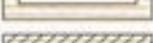
587 By: /s/ Pepper Snyder
588 President

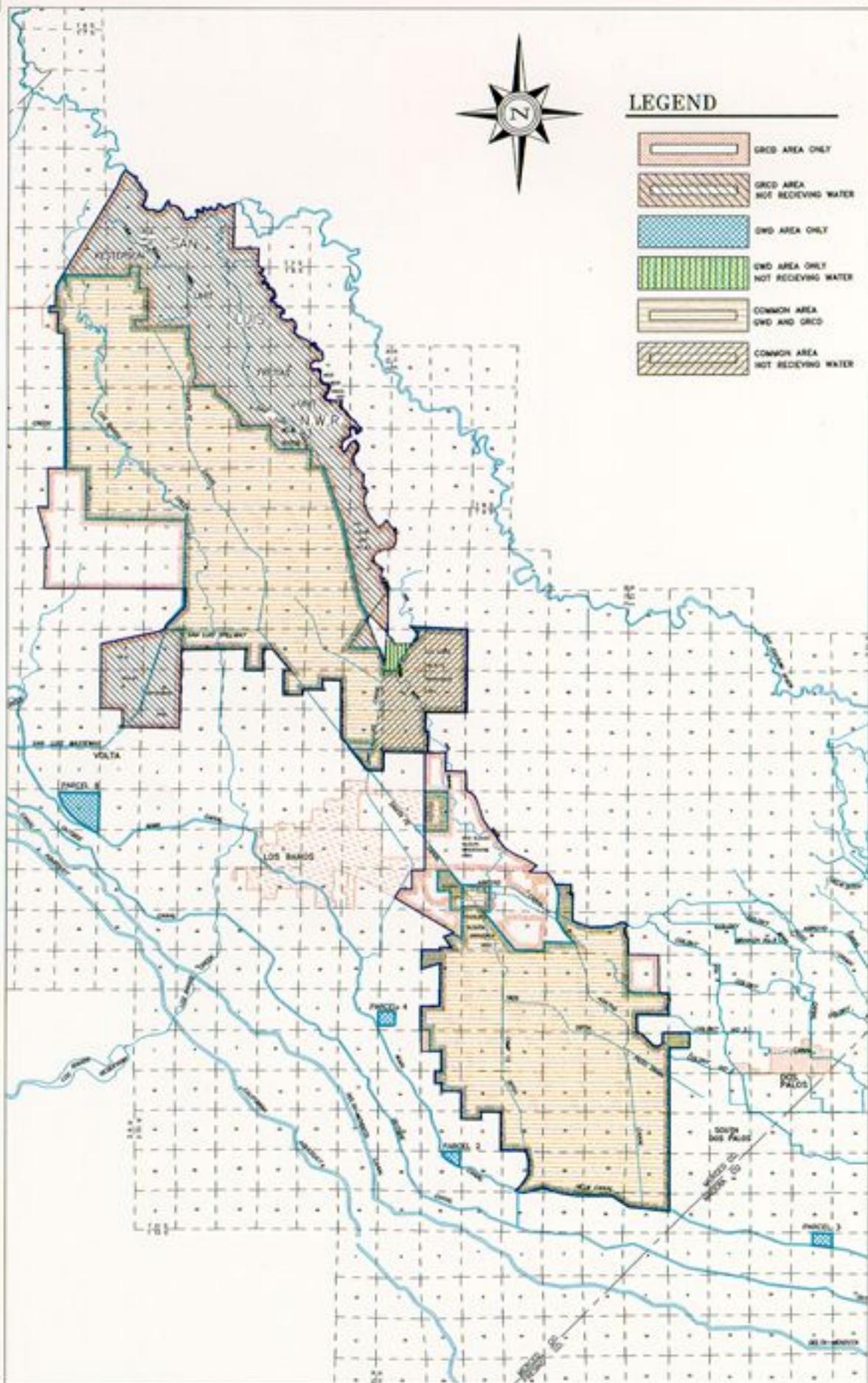
589 Attest

590 By: /s/ Don Marciochi
591 Secretary



LEGEND

-  GRID AREA ONLY
-  GRID AREA NOT RECEIVING WATER
-  GWD AREA ONLY
-  GWD AREA ONLY NOT RECEIVING WATER
-  COMMON AREA GWD AND GRID
-  COMMON AREA NOT RECEIVING WATER



GRASSLAND WATER DISTRICT
GRASSLAND RESOURCE CONSERVATION DISTRICT
AND AREAS INCLUDED IN THIS CONTRACT

EXHIBIT A

Exhibit GWD-17, p. 030

EXHIBIT B

Grassland Water District							
Note: Quantities shown below are acre-feet of water							
Refuge	Level 2 ¹ Water Supplies	Source of Level 2 Water Supplies		Incremental Level 4 ² Water Supplies	Sources of Incremental Level 4 Water Supply		Total Level 4 ³ Supplies
		Contract	Non-Project		Contract	Replacement	
GRCD	125,000	125,000 ⁵	0	55,000	55,000 ⁴	0	180,000
¹ Quantity as defined in Article 1(i) of this Contract							
² Quantity as defined in Article 1(h) of this Contract							
³ Quantity as defined in Article 1(j) of this Contract							
⁴ To be acquired in accordance with Article 3(a) of this Contract							
⁵ Quantity to be provided by this Contract (53,500 ac. ft. had been provided prior to CVPIA pursuant to contract no. 14-06-200-6106, dated September 13, 1956 and contract No. 14-06-200-3447A, dated August 4, 1967; these existing contracts will be suspended as provided for in this Contract)							
Final 01/18/01							

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

CONTRACT BETWEEN THE UNITED STATES
AND
STATE OF CALIFORNIA
FOR WATER SUPPLY
TO
LOS BANOS, VOLTA, NORTH GRASSLANDS AND MENDOTA WILDLIFE AREAS

Table of Contents

<u>Article No.</u>		<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2- 3
1	Definitions	3- 7
2	Term of Contract	7
3	Water to be Made Available and Delivered to the Contractor	7-10
4	Time for Delivery of Water	10-11
5	Point of Diversion, Measurement and Responsibility for Distribution of Water	11-12
6	Pooling of Water Supplies	12-13
7	Transfers, Reallocations or Exchanges of Water	13
8	Temporary Reductions–Return Flows	13-14
9	Water Shortage and Apportionment	15
10	Rules and Regulations	15-16
11	Water and Air Pollution Control	16
12	Quality of Water	16-17
13	Use of Non–Project Facilities for Water Delivery	17
14	Opinions and Determinations	17-18
15	Equal Opportunity	18-19
16	Compliance with Civil Rights Laws and Regulations	19-20
17	Water Conservation	20-22
18	Existing or Acquired Water or Water Rights	22

19	Contingent on Appropriation or Allotment of Funds	23
20	Books, Records, and Reports	23
<u>Article No.</u>		<u>Page No.</u>
21	Assignment Limited–Successors and Assigns Obligated	23-24
22	Liability	24
23	Officials Not to Benefit	25
24	Certification of Nonsegregated Facilities	25
25	Federal Laws	25
26	Notices	26
	Signature Page	27
	Exhibit A	
	Exhibit B	

1
2
3
4 UNITED STATES
5 DEPARTMENT OF THE INTERIOR
6 BUREAU OF RECLAMATION
7 Central Valley Project, California

8 CONTRACT BETWEEN THE UNITED STATES
9 AND
10 STATE OF CALIFORNIA
11 FOR WATER SUPPLY
12 TO
13 LOS BANOS, VOLTA, NORTH GRASSLANDS AND MENDOTA WILDLIFE AREAS

14 THIS CONTRACT, made this 19 day of January, 2001, in pursuance
15 generally of the Act of June 17, 1902 (32 Stat. 388) as amended and supplemented; the Act of August
16 27, 1954 (68 Stat. 879), as amended by the Act of November 8, 1978 (92 Stat. 3110, the Act of
17 October 27, 1986 (100 Stat. 3050), and in particular Section 3406(d) of the Central Valley Project
18 Improvement Act (CVPIA), Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706) all
19 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF
20 AMERICA, represented by the Secretary of the Interior’s duly authorized representative acting
21 pursuant to this Contract, hereinafter referred to as the Contracting Officer, and the State of California,
22 represented by the California Department of Fish and Game, hereinafter referred to as the Contractor,
23 a public agency of the State of California, duly organized, existing, and acting pursuant to the laws
24 thereof, with its principal place of business in Sacramento, California;

25 WITNESSETH, That:

EXPLANATORY RECITALS

2 6

2 7

WHEREAS, the United States has constructed and is operating the Central Valley Project, California (Project), for diversion, storage, carriage, and distribution of the waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries for the following beneficial uses, including, but not limited to, flood control, irrigation, municipal, domestic, industrial water service, the protection, restoration and enhancement of fish, and wildlife, and associated habitats in the Central Valley, the generation and distribution of electric energy, salinity control, and navigation; and

2 8

2 9

3 0

3 1

3 2

3 3

3 4

WHEREAS, the wetlands of the Central Valley have declined to approximately 300,000 acres and these remaining wetlands provide critical wildlife habitat and other environmental benefits, and important recreational and educational opportunities; and

3 5

3 6

3 7

WHEREAS, the Bureau of Reclamation’s 1989 Refuge Water Supply Report concluded that “... it is clear that each refuge requires a dependable supply of good quality water to facilitate proper wetland habitat management for the migratory birds of the Pacific Flyway and resident wildlife and flora.”; and

3 8

3 9

4 0

4 1

WHEREAS, Section 3406(d) of the CVPIA requires the Secretary to provide firm water supplies of suitable quality, through long-term contractual agreements with appropriate parties, to maintain and improve certain wetland habitat areas in the Central Valley in furtherance of the objectives of the Central Valley Habitat Joint Venture and the Central Valley Project to protect, restore and enhance fish and wildlife and associated habitats; and

4 2

4 3

4 4

4 5

4 6

WHEREAS, the directives of Section 3406(d) of the CVPIA have been carried out through a cooperative and collaborative effort between the Bureau of Reclamation and Fish and

4 7

4 8 Wildlife Service, acting for the Secretary of the Interior, the California Department of Fish and Game,
4 9 the Grassland Water District, and the Central Valley Habitat Joint Venture partners; and this
5 0 cooperative and collaborative effort is expected to continue; and

5 1 WHEREAS, the Contracting Officer intends to use Project facilities, in part, to provide
5 2 firm water supplies of suitable quality to maintain and improve the Refuges; and

5 3 WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
5 4 Officer that the Contractor has fully utilized the Central Valley Project water supplies available to it for
5 5 reasonable and beneficial use for fish and wildlife preservation and enhancement (wetland management)
5 6 and/or the Contracting Officer has concluded through the Bureau of Reclamation's 1989 Refuge Water
5 7 Supply Report and the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report that
5 8 the Contractor has projected future demand for water use such that the Contractor has the capability
5 9 and expects to fully utilize for reasonable and beneficial use the quantity of water to be made available
6 0 to it pursuant to this Contract; and

6 1 WHEREAS, the Contracting Officer and the Contractor are willing to execute
6 2 this Contract pursuant to subsection 3406(d) of the CVPIA on the terms and conditions set forth
6 3 below;

6 4 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
6 5 contained, it is hereby mutually agreed by the parties hereto as follows:

6 6 DEFINITIONS

6 7 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible
6 8 with the intent of the parties or expressed in this contract, the term:

6 9 (a) "Calendar Year" shall mean the period January 1 through December 31, both

7 0 dates inclusive;

7 1 (b) “Contractor’s Boundary” shall mean the Refuge(s) to which the Contractor is
7 2 permitted to provide Delivered Water under this contract as identified in Exhibit “A”. Exhibit “A” may
7 3 be revised without amending this Contract upon mutual agreement of the Contractor and the
7 4 Contracting Officer;

7 5 (c) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized
7 6 representative acting pursuant to this Contract;

7 7 (d) “Critically Dry Year” shall mean any Year in which either of the following
7 8 eventualities exists:

7 9 (1) The forecasted full natural inflow to Shasta Lake for the current water
8 0 year (October 1 of the preceding Calendar Year through September 30 of the current Calendar Year),
8 1 as such forecast is made by the Contracting Officer, on or before February 20, and reviewed as
8 2 frequently thereafter as conditions and information warrant, is equal to or less than 3,200,000 acre feet:

8 3 or

8 4 (2) The total accumulated actual deficiencies below 4,000,000 acre-feet in
8 5 the immediately prior water year or series of successive prior water years, each of which had inflows of
8 6 less than 4,000,000 acre-feet, together with the forecasted deficiency for the current water year exceed
8 7 800,000 acre-feet;

8 8 For the purpose of determining a Critically Dry Year, the computed inflow to
8 9 Shasta Lake under present upstream development above Shasta Lake shall be used as the full natural
9 0 inflow to Shasta Lake. In the event that major construction completed above Shasta Lake materially
9 1 alters the present regimen of the stream systems contributing to Shasta Lake, the computed inflow to

9 2 Shasta Lake used to define a Critically Dry Year will be adjusted to eliminate the effect of such material
9 3 alterations.

9 4 After consultation with the State, the National Weather Service, and other
9 5 recognized forecasting agencies, the Contracting Officer shall select the forecast to be used and will
9 6 make the details of it available to the Contractor. The same forecast used by the Contracting Officer for
9 7 operation of the Project shall be used to make forecasts hereunder.

9 8 (e) "CVPIA" shall mean the Central Valley Project Improvement
9 9 Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

1 0 0 (f) "Delivered Water" shall mean the Level 2 Water Supplies and the Incremental
1 0 1 Level 4 Water Supplies diverted by the Contractor pursuant to this Contract at the Point(s) of Delivery
1 0 2 in accordance with Article 4(c) of this Contract;

1 0 3 (g) "Hydrologic Circumstances" shall mean the conditions described in subdivision
1 0 4 (d) of this Article;

1 0 5 (h) "Incremental Level 4 Water Supplies" shall mean the difference between the
1 0 6 Level 2 Water Supplies and the Level 4 Water Supplies depicted in Exhibit "B";

1 0 7 (i) "Level 2 Water Supplies" shall mean the quantities of water referred to in
1 0 8 section 3406 (d)(1) of the CVPIA and depicted in Exhibit "B" of this Contract;

1 0 9 (j) "Level 4 Water Supplies" shall mean the quantities of water referred to in
1 1 0 section 3406 (d)(2) of the CVPIA and depicted in Exhibit "B" of this Contract;

1 1 1 (k) "Non-Project Facilities" shall mean any non-Project water conveyance or storage
1 1 2 facilities;

1 1 3 (l) "Non-Project Water" shall mean water or water rights, other than "Project

1 1 4 Water”, acquired, appropriated by, transferred to or assigned to the Contractor or, transferred to the
1 1 5 United States for delivery to one or more of the Contractor’s Refuges, as identified in Exhibit “B”;

1 1 6 (m) “Point(s) of Delivery” shall mean the location(s) established and revised
1 1 7 pursuant to Article 5(a) of this Contract , at which Level 2 Water Supplies of Project Water and
1 1 8 Incremental Level 4 Water Supplies are deemed to be delivered to the Contractor and at which the
1 1 9 Contractor shall assume the responsibility for the further control, carriage, handling, use, disposal or
1 2 0 distribution of such water supplies so long as such water supplies are being used in accordance with the
1 2 1 terms and conditions of this Contract;

1 2 2 (n) “Project” shall mean the Central Valley Project owned by the United States
1 2 3 and managed by the Department of the Interior, Bureau of Reclamation;

1 2 4 (o) “Project Water” shall mean all water that is developed, diverted, stored, or
1 2 5 delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in
1 2 6 accordance with the terms and conditions of applicable water rights acquired pursuant to California
1 2 7 law;

1 2 8 (p) “Refuge(s)” shall mean the lands in the units of the National Wildlife Refuge
1 2 9 System in the Central Valley of California; Gray Lodge, Los Banos, Volta, North Grasslands and
1 3 0 Mendota state wildlife management areas; and the Grassland Resource Conservation District all
1 3 1 identified in the Refuge Water Supply Report and the land(s) identified in the San Joaquin Basin Action
1 3 2 Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation as set forth in
1 3 3 Section 3406(d) of the CVPIA and/or as revised in accordance with subdivision (b) of this Article;

1 3 4 (q) “Refuge Water Supply Report” shall mean the report issued by the Mid-Pacific
1 3 5 Region of the Bureau of Reclamation of the United States Department of the Interior entitled “Report

1 3 6 on Refuge Water Supply Investigations, Central Valley Hydrologic Basin, California” (March 1989);

1 3 7 (r) "Secretary" shall mean the Secretary of the Interior, a duly appointed
1 3 8 successor, or an authorized representative acting pursuant to any authority of the Secretary through any
1 3 9 agency of the Department of the Interior;

1 4 0 (s) "Year" shall mean the period from and including March 1 of
1 4 1 each Calendar Year through the last day of February of the following Calendar Year;

1 4 2 TERM OF CONTRACT

1 4 3 2. (a) This contract shall be effective on March 1, 2001 and shall remain in effect
1 4 4 through February 28, 2026.

1 4 5 (b) Upon request by the Contractor, this Contract shall be renewed for successive periods
1 4 6 of twenty-five (25) years each, subject to the terms and conditions mutually agreeable to the parties.
1 4 7 The Contractor shall request renewal of the Contract at least two (2) years prior to the date on which
1 4 8 this Contract expires.

1 4 9 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

1 5 0 3. (a) During each Year, consistent with State water rights, permits and licenses,
1 5 1 federal law, and subject to the provisions set forth in Articles 8 and 9 of this Contract, the Contracting
1 5 2 Officer shall, at the Point(s) of Delivery, make available and/or convey to the Contractor the maximum
1 5 3 quantities of Project Water and Non-Project Water, respectively, required to provide each of the
1 5 4 Refuges with the Level 2 Water Supplies set forth in Exhibit “B” and the Incremental Level 4 Water
1 5 5 Supplies set forth in Exhibit “B”. The quantities of Level 2 Water Supplies and Incremental Level 4
1 5 6 Water Supplies made available and/or conveyed to the Contractor shall be scheduled in accordance
1 5 7 with the provisions of Article 4 of this Contract; Provided, that in light of the fact that, Section

1 5 8 3406(d)(2) of the CVPIA provides that the Incremental Level 4 Water Supplies shall be acquired in
1 5 9 cooperation with the State of California and in consultation with the Central Valley Habitat Joint
1 6 0 Venture and other interests in cumulating increments of not less than ten percent per annum, from the
1 6 1 date the CVPIA was enacted, through voluntary measures which include, but are not limited to, water
1 6 2 conservation, conjunctive use, purchase, lease, donations, or similar activities, or a combination of such
1 6 3 activities which do not require involuntary reallocation of Project yield, water being provided as all or
1 6 4 part of the Incremental Level 4 Water Supplies for each of the Refuges can be made available only to
1 6 5 the extent that the Contracting Officer is able to acquire the Incremental Level 4 Water Supplies from
1 6 6 willing sources; Accordingly, the Contracting Officer shall use his/her best efforts to acquire the
1 6 7 Incremental Level 4 Water Supplies and shall coordinate acquisitions of Level 4 Water Supplies with
1 6 8 acquisitions of Environmental Water Account (EWA) water pursuant to the Operating Principles
1 6 9 Agreement, dated August 28, 2000 attached to the Record of Decision for the CALFED Bay-Delta
1 7 0 Program, dated August 28, 2000 and/or other acquisitions of water for environmental purposes to
1 7 1 ensure that acquisitions of Incremental Level 4 Water Supplies have a priority at least equal to
1 7 2 acquisitions of EWA and/or other environmental water each Year. The Contracting Officer also agrees
1 7 3 that the Interagency Refuge Management Team, created pursuant to Article 6 of this Contract, shall be
1 7 4 included among the interests consulted in acquiring Incremental Level 4 Water Supplies.

1 7 5 (b) The Contractor shall continue use of the Non-Project Water component of the Level 2
1 7 6 Water Supplies set forth in Exhibit "B" as long as such Non-Project Water remains available to the
1 7 7 Contractor and is of suitable quality. In the event that such water supply is unavailable to the
1 7 8 Contractor, or is not of suitable quality, subject to the provisions set forth in Articles 8 and 9 of this
1 7 9 Contract, the Contracting Officer shall deliver to the Contractor sufficient substitute Project Water to

1 8 0 ensure that the quantities of Level 2 Water Supplies are available to the Contractor in accordance with
1 8 1 subdivision (a) of this Article.

1 8 2 (c) The Contractor shall comply with requirements applicable to the Contractor in
1 8 3 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
1 8 4 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within
1 8 5 the Contractor's legal authority to implement. The Contractor shall comply with the limitations or
1 8 6 requirements imposed by environmental documentation applicable to the Contractor and within its legal
1 8 7 authority to implement. Nothing herein shall be construed to prevent the Contractor from challenging or
1 8 8 seeking judicial relief in a court of competent jurisdiction with respect to any Biological Opinion or other
1 8 9 environmental documentation referred to in this Article.

1 9 0 (d) The Contractor shall make reasonable and beneficial use of all Delivered
1 9 1 Water furnished pursuant to this Contract consistent with the wetland habitat water management plan(s)
1 9 2 described in Article 17 of this Contract.

1 9 3 (e) In order to maximize water available to Refuges and better manage such water,
1 9 4 the Contractor may request the Contracting Officer's permission to reschedule a portion of the Level 2
1 9 5 Water Supplies and/or a portion of the Incremental Level 4 Water Supplies made available to the
1 9 6 Contractor for use within the Contractor's Boundary during the current Year for use within the
1 9 7 subsequent Year. The Contracting Officer may permit such rescheduling in accordance with applicable
1 9 8 law, and the then-current applicable rescheduling guidelines and policies. Upon execution of this
1 9 9 Contract, the Contracting Officer shall have adopted amendments to any applicable rescheduling
2 0 0 guidelines and policies to provide for the rescheduling of refuge water in accordance with this Article.
2 0 1 After execution of this Contract and annually thereafter, the Contracting Officer shall provide the

202 Contractor with a copy of the then-current rescheduling guidelines and policies.

203 (f) The Contracting Officer shall not interfere with the Contractor's right pursuant
204 to Federal Reclamation law and applicable California law to the beneficial use of water furnished
205 pursuant to this Contract so long as the Contractor fulfills all of its obligations under this Contract. A
206 reduction in water supplies pursuant to Article 9 of this Contract shall not be deemed to constitute such
207 interference.

208 TIME FOR DELIVERY OF WATER

209 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
210 provide the Contractor, in writing, with a preliminary forecast of whether the upcoming Year will be a
211 Critically Dry Year; and, if a Critically Dry Year is forecast, the extent to which Level 2 Water Supplies
212 to be made available to the Contractor during the upcoming Year are to be shorted pursuant to Article
213 9 of this Contract; and the amount of Incremental Level 4 Water Supplies estimated to be made
214 available to the Contractor pursuant to this Contract for the upcoming Year. The forecast will be
215 updated monthly, as necessary, based on then-current hydrologic conditions. Upon the request of the
216 Contractor, the Contracting Officer shall make available to the Contractor the data on which the
217 Contracting Officer relied to determine whether the Year in question will or will not be a Critically Dry
218 Year and to determine the amounts of Level 2 Water Supplies and Incremental Level 4 Water Supplies
219 to be made available to the Contractor pursuant to this Contract during a Critically Dry Year.

220 (b) Based on the forecast(s) referred to in subdivision (a) of this Article, on or before
221 March 1 of each Calendar Year, the Contractor shall submit to the Contracting Officer a written
222 schedule, satisfactory to the Contracting Officer, showing both the monthly and annual quantities of
223 Level 2 Water Supplies and Incremental Level 4 Water Supplies to be delivered by the Contracting

2 2 4 Officer to each of the Refuges pursuant to this Contract. Each schedule shall be updated on a monthly
2 2 5 basis to reflect actual use and remaining estimated needs.

2 2 6 (c) In accordance with subdivision (a) of Article 3 of this Contract, the Contracting Officer
2 2 7 shall make available and/or convey Level 2 Water Supplies and Incremental Level 4 Water Supplies
2 2 8 for diversion by the Contractor at the Points of Delivery in accordance with the schedule submitted by
2 2 9 the Contractor pursuant to subdivision (b) of this Article, or any written revision(s) thereto, mutually
2 3 0 agreed to by the Contracting Officer and the Contractor which are submitted to the Contracting Officer
2 3 1 within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

2 3 2 POINT OF DIVERSION, MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION
2 3 3 OF WATER

2 3 4 5. (a) The original Point(s) of Delivery shall be established by written mutual
2 3 5 agreement of the Contractor and the Contracting Officer. Such Point(s) of Delivery may be revised
2 3 6 without amending this Contract upon written mutual agreement of the Contracting Officer and the
2 3 7 Contractor.

2 3 8 (b) All water delivered to the Contractor pursuant to this Contract is to be
2 3 9 measured at the Point(s) of Delivery to reflect the quantities of Level 2 Water Supplies and Incremental
2 4 0 Level 4 Water Supplies delivered to the Contractor's Boundary. Upon the request of the Contractor or
2 4 1 on the Contracting Officer's own initiative, the Contracting Officer shall investigate the accuracy of such
2 4 2 measurements and the parties will jointly take any necessary steps to adjust any errors appearing
2 4 3 therein. For any period of time when accurate measurement has not been made, the Contracting
2 4 4 Officer shall consult with the Contractor prior to making a determination of the quantity of Delivered
2 4 5 Water for that period of time. The Contractor shall advise the Contracting Officer on or before the 10th

2 4 6 calendar day of each month of the quantities of Level 2 Water Supplies and Incremental Level 4 Water
2 4 7 Supplies taken during the preceding month at the Point(s) of Delivery.

2 4 8 (c) The Contracting Officer shall not be responsible for the control, carriage,
2 4 9 handling, use, disposal, or distribution of water delivered to the Contractor pursuant to this Contract
2 5 0 beyond the Point(s) of Delivery specified in subdivision (a) of this Article.

2 5 1 POOLING OF WATER SUPPLIES

2 5 2 6. (a) Whenever the maximum quantities of Level 2 Water Supplies and/or the
2 5 3 Incremental Level 4 Water Supplies depicted in Exhibit "B" are reduced pursuant to Article 9 of this
2 5 4 Contract, the remaining Level 2 Water Supplies and/or the Incremental Level 4 Water Supplies may be
2 5 5 pooled for use on other Refuge(s); Provided, that no individual Refuge shall receive more Level 2
2 5 6 Water Supplies than would have been made available to it absent a reduction pursuant to Article 9 of
2 5 7 this Contract; or be reduced by more than twenty-five (25) percent; Provided further, that the
2 5 8 Contracting Officer makes a written determination that pooling of water for use on other Refuge(s)
2 5 9 would not have an adverse impact, that cannot be reasonably mitigated, on Project operations, other
2 6 0 Project Contractors, or other Project purposes; Provided further, that the Contracting Officer
2 6 1 determines that such reallocation is permitted under the terms and conditions of the applicable
2 6 2 underlying water right permit and/or license; and Provided still further, that water made available under
2 6 3 this contract may not be scheduled for delivery outside the Contractor's Boundary without prior
2 6 4 written approval of the Contracting Officer.

2 6 5 (b) An Interagency Refuge Water Management Team, to be chaired by the Contracting
2 6 6 Officer and to be established upon execution of this Contract, shall be entitled to collaboratively
2 6 7 allocate the pooled water supplies and provide a schedule for delivery of the pooled supplies to meet

268 the highest priority needs of the Refuge(s) as depicted in Exhibit “B”; Provided, however, nothing in this
269 Article is intended to require the Contractor to pool the water supply provided for in this Contract. The
270 Interagency Refuge Water Management Team shall be composed of designees of the Bureau of
271 Reclamation, the United States Fish and Wildlife Service, the California Department of Fish and Game,
272 and the Grassland Water District.

273 TRANSFERS, REALLOCATIONS OR EXCHANGES OF WATER

274 7. Subject to the prior written approval of the Contracting Officer, the Project Water made
275 available under this Contract may be transferred, reallocated or exchanged in that Year to other
276 Refuge(s) or Project contractors if such transfer, reallocation or exchange is requested by the
277 Contractor and is authorized by applicable Federal and California State laws, and then-current
278 applicable guidelines or regulations.

279 TEMPORARY REDUCTIONS--RETURN FLOWS

280 8. (a) Consistent with the authorized purposes and priorities of the Project and the
281 requirements of Federal law, the Contracting Officer shall make all reasonable efforts to optimize water
282 deliveries to the Contractor as provided in this Contract.

283 (b) The quantity of water to be delivered to the Contractor as herein provided may
284 be temporarily discontinued or reduced when investigation, inspection, maintenance, repair, or
285 replacement of any of the Project facilities and/or Non-Project Facilities or any part thereof necessary
286 for the delivery of water to the Contractor is required. The Contracting Officer shall give and/or arrange
287 to have the owner/operator of Non-Project Facilities give the Contractor due written notice in advance
288 of such temporary discontinuance or reduction, except in case of an emergency, when no advance
289 notice is possible, in which case the Contracting Officer shall notify and/or arrange to have the

290 owner/operator of the Non-Project Facilities notify the Contractor of said discontinuance or reduction
291 as soon as is feasible; Provided, that the Contracting Officer shall use its best efforts to avoid any
292 discontinuance or reduction in such service. Upon resumption of service after such reduction or
293 discontinuance, and if requested by the Contractor, the Contracting Officer will make all reasonable
294 efforts, consistent with other obligations and operational constraints, to deliver the quantity of water
295 which would have been delivered hereunder in the absence of such discontinuance or reduction.

296 (c) The United States reserves the right to all seepage and return flow water
297 derived from Delivered Water which escapes or is discharged beyond the Contractor's Boundary;
298 Provided, that this shall not be construed as claiming for the United States any right to seepage or return
299 flow being put to beneficial use pursuant to this contract within the Contractor's Boundary by the
300 Contractor or those claiming by, through, or under the Contractor.

301 WATER SHORTAGE AND APPORTIONMENT

302 9. (a) In a Critically Dry Year, the Contracting Officer may temporarily reduce, for
303 that Year, the availability of Level 2 Water Supplies up to twenty-five (25) percent of the maximum
304 quantities set forth in Exhibit "B" whenever reductions due to Hydrologic Circumstances are imposed
305 upon agricultural deliveries of Project Water; Provided, that such reductions shall not exceed in
306 percentage terms the reductions imposed on agricultural service contractors. The quantity of Non-
307 Project Water available to one or more of the Refuges as part of its/their Level 2 Water Supplies may
308 be reduced by more than twenty-five (25) percent in Years when the quantity of Project Water made
309 available to the Contractor can be reduced by no more than twenty-five (25) percent. In such cases,

3 1 0 the Contracting Officer shall make up the supply difference with water supplies provided by the
3 1 1 Contracting Officer to ensure that Level 2 Water Supplies from all sources are not reduced by more
3 1 2 than twenty-five (25) percent.

3 1 3 (b) Reductions in the Level 2 Water Supplies to be made available to the individual
3 1 4 Refuge(s) pursuant to this Contract, shall be imposed only in a Critically Dry Year. For the Incremental
3 1 5 Level 4 Water Supplies provided from Non-Project Water and Project Water, reductions shall be
3 1 6 imposed in accordance with the priority or priorities that were applied to such Non-Project Water and
3 1 7 the shortages assigned to Project Water prior to its transfer or acquisition as Incremental Level 4 Water
3 1 8 Supplies.

3 1 9 RULES AND REGULATIONS

3 2 0 10. The parties agree that the delivery of water pursuant to this Contract is subject to
3 2 1 Federal Reclamation law, as may be amended and supplemented, as applicable, and the rules and
3 2 2 regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

3 2 3 WATER AND AIR POLLUTION CONTROL

3 2 4 11. The Contractor, in carrying out this contract, shall comply with all applicable water and
3 2 5 air pollution laws and regulations of the United States and the State of California, and shall obtain all
3 2 6 required permits or licenses from the appropriate Federal, State, or local authorities.

3 2 7 QUALITY OF WATER

3 2 8 12. (a) Consistent with other legal obligations, the water delivered by the Contracting
3 2 9 Officer to the Contractor pursuant to this Contract shall be of suitable quality to maintain and improve
3 3 0 wetland habitat areas and of comparable quality to water provided to other Project purposes within the
3 3 1 same geographical areas; Provided, that the Contracting Officer is under no obligation to construct or
3 3 2 furnish water treatment facilities to maintain or to improve the quality of the water furnished to the

3 3 3 Contractor pursuant to this contract. The quality of Delivered Water may be monitored by the
3 3 4 Contractor at the Point(s) of Delivery on an as needed basis. Should the Contracting Officer, in
3 3 5 consultation with the Contractor, determine that the Level 2 Water Supplies and/or the Level 4 Water
3 3 6 Supplies to be made available to the Contractor pursuant to this Contract during all or any part of a
3 3 7 Year will not be of the quality that the Contractor feels is suitable to maintain and improve wetland
3 3 8 habitat areas, the Contractor and the Contracting Officer shall meet within 48 hours or at a time
3 3 9 mutually agreeable to the parties and determine the appropriate actions necessary to identify and
3 4 0 address the source of the water quality problems.

3 4 1 (b) The operation and maintenance of Project facilities shall be performed in such
3 4 2 manner as is practicable to maintain the quality of raw water made available through such facilities at the
3 4 3 highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
3 4 4 responsible for compliance with all State of California and Federal water quality standards and
3 4 5 directives applicable to surface return flows and subsurface agricultural drainage discharges generated
3 4 6 within its boundaries arising from water conveyed to the Refuges pursuant to this Contract. This
3 4 7 Contract does not create any obligation on the Contracting Officer to provide drainage services.

3 4 8 USE OF NON-PROJECT FACILITIES FOR WATER DELIVERY

3 4 9 13. Any use of Non-Project Facilities, including use of State Water Project facilities pursuant
3 5 0 to Joint Point of Diversion or other use of State Water Project facilities to deliver the water supplies
3 5 1 provided for in the Contract, or any agreement for the use of such Non-Project Facilities, shall in no
3 5 2 way alter the obligation of the Contracting Officer to make available and deliver water supplies in
3 5 3 accordance with all of the terms and conditions of this Contract. In addition, any costs incurred in the
3 5 4 use of Non-Project Facilities to deliver water supplies pursuant to this Contract shall be paid for in

3 5 5 accordance with Section 3406(d)(3) of the CVPIA.

3 5 6 OPINIONS AND DETERMINATIONS

3 5 7 14. (a) Where the terms of this Contract provide for actions to be based upon the
3 5 8 opinion or determination of either party to this Contract, said terms shall not be construed as permitting
3 5 9 such action to be predicated upon opinions or determinations that are arbitrary, capricious or
3 6 0 unreasonable. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the
3 6 1 right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable
3 6 2 opinion or determination. Each opinion or determination by either party shall be provided in a timely
3 6 3 manner. Nothing in this subdivision of this Article is intended to or shall affect or alter the standard of
3 6 4 judicial review applicable under federal law to any opinion or determination implementing a specific
3 6 5 provision of federal law embodied in statute or regulation.

3 6 6 (b) Both parties to this Contract shall have the right to make determinations
3 6 7 necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of
3 6 8 the United States and of California, and the rules and regulations promulgated by the Secretary of the
3 6 9 Interior. Each party shall make such determinations in consultation with the other party to the extent
3 7 0 reasonably practicable.

3 7 1 EQUAL OPPORTUNITY

3 7 2 15. During the performance of this contract, the Contractor agrees as follows:

3 7 3 (a) The Contractor will not discriminate against any employee or applicant for
3 7 4 employment because of race, color, religion, sex, or national origin. The Contractor will take
3 7 5 affirmative action to ensure that applicants are employed, and that employees are treated during
3 7 6 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
3 7 7 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment
3 7 8 or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and
3 7 9 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places,

380 available to employees and applicants for employment, notices to be provided by the Contracting
381 Officer setting forth the provisions of this nondiscrimination clause.

382 (b) The Contractor will, in all solicitations or advertisements for employees placed
383 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for
384 employment without discrimination because of race, color, religion, sex, or national origin.

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

391 (d) The Contractor will comply with all provisions of Executive Order No. 11246
392 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary
393 of Labor.

394 (e) The Contractor will furnish all information and reports required by said
395 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
396 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
397 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
398 regulations, and orders.

399 (f) In the event of the Contractor's noncompliance with the nondiscrimination
400 clauses of this contract or with any of the said rules, regulations, or orders, this contract may be
401 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
402 for further Government contracts in accordance with procedures authorized in said amended Executive
403 Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive
404 Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

405 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
406 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
407 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
408 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
409 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
410 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in
411 the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or
412 vendor as a result of such direction, the Contractor may request the United States to enter into such
413 litigation to protect the interests of the United States.

414 COMPLIANCE WITH CIVIL RIGHTS LAWS
415 AND REGULATIONS

4 1 6 16. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
4 1 7 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
4 1 8 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well
4 1 9 as with their respective implementing regulations and guidelines imposed by the U.S. Department of the
4 2 0 Interior and/or Bureau of Reclamation.

4 2 1 (b) These statutes require that no person in the United States shall, on the grounds
4 2 2 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
4 2 3 benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial
4 2 4 assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to
4 2 5 immediately take any measures necessary to implement this obligation, including permitting officials of
4 2 6 the United States to inspect premises, programs, and documents.

4 2 7 (c) The Contractor makes this agreement in consideration of and for the purpose of
4 2 8 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
4 2 9 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
4 3 0 installment payments after such date on account of arrangements for Federal financial assistance which
4 3 1 were approved before such date. The Contractor recognizes and agrees that such Federal assistance
4 3 2 will be extended in reliance on the representations and agreements made in this Article, and that the
4 3 3 United States reserves the right to seek judicial enforcement thereof.

4 3 4 WATER CONSERVATION

4 3 5 17. (a) The Contractor shall prepare individual refuge wetland habitat water
4 3 6 management plan(s) in order to ensure the effective use of water supplies to meet wetland resource
4 3 7 needs and to meet the objectives of the Central Valley Habitat Joint Venture and the purposes of the
4 3 8 CVPIA to maintain and improve certain Central Valley wetland habitat areas. Criteria to prepare and
4 3 9 evaluate refuge wetland habitat water management plan(s) shall be developed by the Interagency
4 4 0 Refuge Water Management Team within one (1) year of the execution of this Contract, and reviewed
4 4 1 and updated every five (5) years thereafter taking into consideration the provisions of the Interagency
4 4 2 Coordinated Program Task Force report dated June 1998. The criteria shall include economically
4 4 3 feasible water management measures which can improve the Contractors' efficient use of water in a
4 4 4 manner appropriate for wetland and wildlife management, and shall also include time schedules for

4 4 5 meeting the water use efficiency and conservation objectives. The criteria shall grant substantial
4 4 6 deference to on-going state efforts related to wetlands water management and shall take into account
4 4 7 the unique requirements associated with water use for the maintenance and enhancement of wetland
4 4 8 and wildlife habitat. The Contractor shall make all reasonable efforts, consistent with appropriate
4 4 9 limitations recognized in Article 19 of this Contract, to complete the original wetland habitat water
4 5 0 management plan(s) within one (1) year of the establishment of the criteria. The Contracting Officer will
4 5 1 review and determine if the wetland habitat water management plan(s) meet the established criteria for
4 5 2 evaluating said plan within ninety (90) days of receipt of each plan.

4 5 3 (b) Prior to the Contractor being afforded opportunities such as pooling
4 5 4 and rescheduling of water supplies pursuant to Articles 3 and 6 of this Contract, the Contractor must
4 5 5 be implementing a wetland habitat water management plan that has been determined by the Contracting
4 5 6 Officer to meet the established criteria developed pursuant to subdivision (a) of this Article for
4 5 7 preparing and evaluating said plan. Continued pooling and rescheduling benefits pursuant to Articles 3
4 5 8 and 6 of this Contract shall be contingent upon the Contractor's continued implementation of such
4 5 9 wetland habitat water management plans. In the event the Contracting Officer determines the
4 6 0 Contractor is unable to implement its wetland habitat water management plan, due to circumstances
4 6 1 beyond its control, the pooling and rescheduling benefits of Articles 3 and 6 of this Contract shall be
4 6 2 continued so long as the Contractor diligently works with the Contracting Officer to obtain such
4 6 3 determination at the earliest practicable date and thereafter the Contractor begins implementing its
4 6 4 wetland habitat water management plan immediately after the circumstances preventing implementation
4 6 5 have ceased.

4 6 6 (c) In the event that implementation of the wetland habitat water management

4 6 7 plan(s) prepared pursuant to subdivision (a) of this Article results in water savings, all conserved water
4 6 8 supplies may be transferred/reallocated, under the terms and conditions of this Contract, to other
4 6 9 wetland, wildlife and fishery needs or to other Project contractors in accordance with the
4 7 0 recommendations of the Interagency Refuge Water Management Team established pursuant to Article
4 7 1 6 of this Contract; Provided, that the Contracting Officer makes a written determination that such
4 7 2 transfer/reallocation of conserved water would not have an adverse impact, that cannot be reasonably
4 7 3 mitigated, on Project operations, other Project contractors or other Project purposes; Provided further,
4 7 4 that the transfer/reallocation is requested by the Contractor and the Contracting Officer determines that
4 7 5 the transfer/reallocation is authorized by applicable laws, and then-current applicable guidelines and/or
4 7 6 regulations.

4 7 7 (d) The Contractor shall submit to the Contracting Officer an annual update on the
4 7 8 status of its implementation of the wetland habitat water management plan(s) for the previous Water
4 7 9 Year.

4 8 0 (e) At five (5) year intervals, the Contractor shall revise its wetland habitat water
4 8 1 management plan(s), as necessary, to reflect the then-current criteria for preparing and evaluating said
4 8 2 plans and submit such revised plan(s). Upon completion of such revised plan(s), the Contractor shall
4 8 3 submit such revised plan(s) to the Contracting Officer for review and so the Contracting Officer can
4 8 4 determine whether such plan(s) meet the then-current criteria.

4 8 5 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

4 8 6 18. Except as provided in subdivision (b) of Article 3, the exercise of existing water rights by
4 8 7 the Contractor, or its acquisition of additional water or water rights from other than the United States,
4 8 8 shall not alter the obligation of the Contracting Officer to provide the maximum quantities of Level 2

4 8 9 Water Supplies and Incremental Level 4 Water Supplies under subdivision (a) of Article 3 of this
4 9 0 Contract.

4 9 1 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

4 9 2 19. (a) The expenditure or advance of any money or the performance of any obligation
4 9 3 of the United States under this contract shall be contingent upon appropriation or allotment of funds.
4 9 4 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
4 9 5 under this contract. No liability shall accrue to the United States in case funds are not appropriated or
4 9 6 allotted.

4 9 7 (b) The expenditure of any funds and the performance of any terms of this contract by the
4 9 8 Contractor may require appropriation of funds or the allotment of funds by the State Legislature and
4 9 9 shall be contingent upon such appropriation or allotment being made. The failure of the State Legislature
5 0 0 to appropriate funds or the absence of any allotment of funds shall not impose any liability on the State
5 0 1 of California.

5 0 2 BOOKS, RECORDS, AND REPORTS

5 0 3 20. (a) The Contractor shall establish and maintain accounts and other books and
5 0 4 records pertaining to administration of the terms and conditions of this contract, including: the
5 0 5 Contractor's financial transactions, water supply data, and right-of-way agreements; and other matters
5 0 6 that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer
5 0 7 in such form and on such date or dates as the Contracting Officer may require. Subject to applicable
5 0 8 Federal laws and regulations, each party to this contract shall have the right during office hours to
5 0 9 examine and make copies of the other party's books and records relating to matters covered by this
5 1 0 contract.

5 1 1 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records, or
5 1 2 other information shall be requested from the Contractor by the Contracting Officer unless such books,
5 1 3 records, or information are reasonably related to the administration or performance of this Contract.
5 1 4 Any such request shall allow the Contractor a reasonable period of time within which to provide the

5 1 5 requested books, records, or information.

5 1 6 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

5 1 7 21. (a) The provisions of this contract shall apply to and bind the successors and
5 1 8 assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein
5 1 9 shall be valid until approved in writing by the Contracting Officer.

5 2 0 (b) The assignment of any right or interest in this contract by either party shall not
5 2 1 interfere with the rights or obligations of the other party to this contract absent the written concurrence
5 2 2 of said other party.

5 2 3 (c) The Contracting Officer shall not unreasonably condition or withhold his/her
5 2 4 approval of any proposed assignment.

5 2 5 LIABILITY

5 2 6 22. (a) The Contractor shall not assert that the United States, its officers, agents and
5 2 7 employees are responsible for legal liability for damages of any nature whatsoever arising out of any
5 2 8 actions or omissions by the Contractor, its officers, agents and employees in the performance of this
5 2 9 Contract.

5 3 0 (b) The United States shall not assert that the Contractor, its officers, agents and
5 3 1 employees are responsible for legal liability for damages of any nature whatsoever arising out of any
5 3 2 actions or omissions by the United States, its officers, agents and employees in the performance of this
5 3 3 Contract.

5 3 4 (c) Within thirty (30) days of receipt by either party of any claim for liability arising
5 3 5 from actions within the scope of this Contract, the party receiving the claim shall notify the other party
5 3 6 of such claim and provide a copy of the claim to the other party, if it is in written form. Nothing in this
5 3 7 Article shall be construed to limit the right of either party to assert such affirmative defenses and file

5 3 8 such cross complaints as may be appropriate in relation to any claim affecting the liability of such party.

5 3 9 OFFICIALS NOT TO BENEFIT

5 4 0 23. No Member of or Delegate to Congress, Resident Commissioner, or official of the
5 4 1 Contractor shall benefit from this contract.

5 4 2 CERTIFICATION OF NONSEGREGATED FACILITIES

5 4 3 24. The Contractor hereby certifies that it does not maintain or provide for its employees
5 4 4 any segregated facilities at any of its establishments, and that it does not permit its employees to
5 4 5 perform their services at any location, under its control, where segregated facilities are maintained. It
5 4 6 certifies further that it will not maintain or provide for its employees any segregated facilities at any of its
5 4 7 establishments, and that it will not permit its employees to perform their services at any location, under
5 4 8 its control, where segregated facilities are maintained. The Contractor agrees that a breach of this
5 4 9 certification is a violation of the Equal Opportunity clause in this contract. As used in this certification,
5 5 0 the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms,
5 5 1 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
5 5 2 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities
5 5 3 provided for employees which are segregated by explicit directive or are in fact segregated on the basis
5 5 4 of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor
5 5 5 further agrees that (except where it has obtained identical certifications from proposed subcontractors
5 5 6 for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the
5 5 7 award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal
5 5 8 Opportunity clause; that it will retain such certifications in its files; and that it will forward the following
5 5 9 notice to such proposed subcontractors (except where the proposed subcontractors have submitted
5 6 0 identical certifications for specific periods):

5 6 1 FEDERAL LAWS

5 6 2 25. By entering into this Contract, the Contractor does not waive its rights to contest the
5 6 3 validity or application of, or compliance with, any federal law or regulation in connection with the
5 6 4 performance of the terms and conditions of this Contract , nor does the Contractor waive any rights it
5 6 5 may have to seek enforcement of obligations of the Secretary to provide water supplies to the

5 6 6 Contractor under federal law independent of this Contract; Provided, that the Contractor agrees to
5 6 7 comply with the terms and conditions of this Contract unless and until relief from or compliance with
5 6 8 application of such Federal law or regulation to the implementing provision of the Contract is granted by
5 6 9 a court of competent jurisdiction.

5 7 0 NOTICES

5 7 1 26. Any notice, demand, or request authorized or required by this contract shall be deemed
5 7 2 to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the
5 7 3 Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 97321-1813, and
5 7 4 on behalf of the United States, when mailed, postage prepaid, or delivered to the California Department
5 7 5 of Fish and Game, Legal Affairs Division, 1416 Ninth Street, 12th Floor, Sacramento, CA 95814. The
5 7 6 designation of the addressee or the address may be changed by notice given in the same manner as
5 7 7 provided in this Article for other notices.

578 IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and
579 year first above written.

580 THE UNITED STATES OF AMERICA

581 By: /s/ Lester Snow
582 Regional Director, Mid-Pacific Region
583 Bureau of Reclamation

583 APPROVED AS TO LEGAL
584 FORM AND SUFFICIENCY

585 /s/ James E. Turner

586 (SEAL) CALIFORNIA DEPARTMENT OF FISH & GAME
587 OFFICE OF REGIONAL SOLICITOR
588 DEPARTMENT OF THE INTERIOR

589 By: /s/ Robert C. Hight
590 Director

MERCED CO

9S
9E
23

9S
9E
24

9S
10E
19

9S
10E
20

9S
9E
26

9S
9E
25

9S
10E
30

9S
10E
29

9S
9E
35

9S
9E
36

9S
10E
31

9S
10E
32

LOS BANOS CREEK

1 0 1 Miles

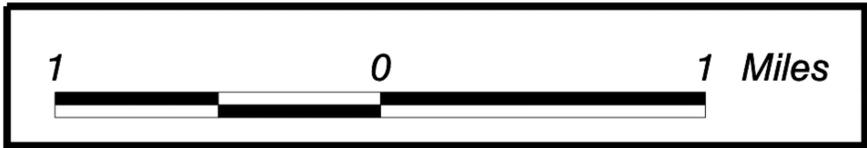
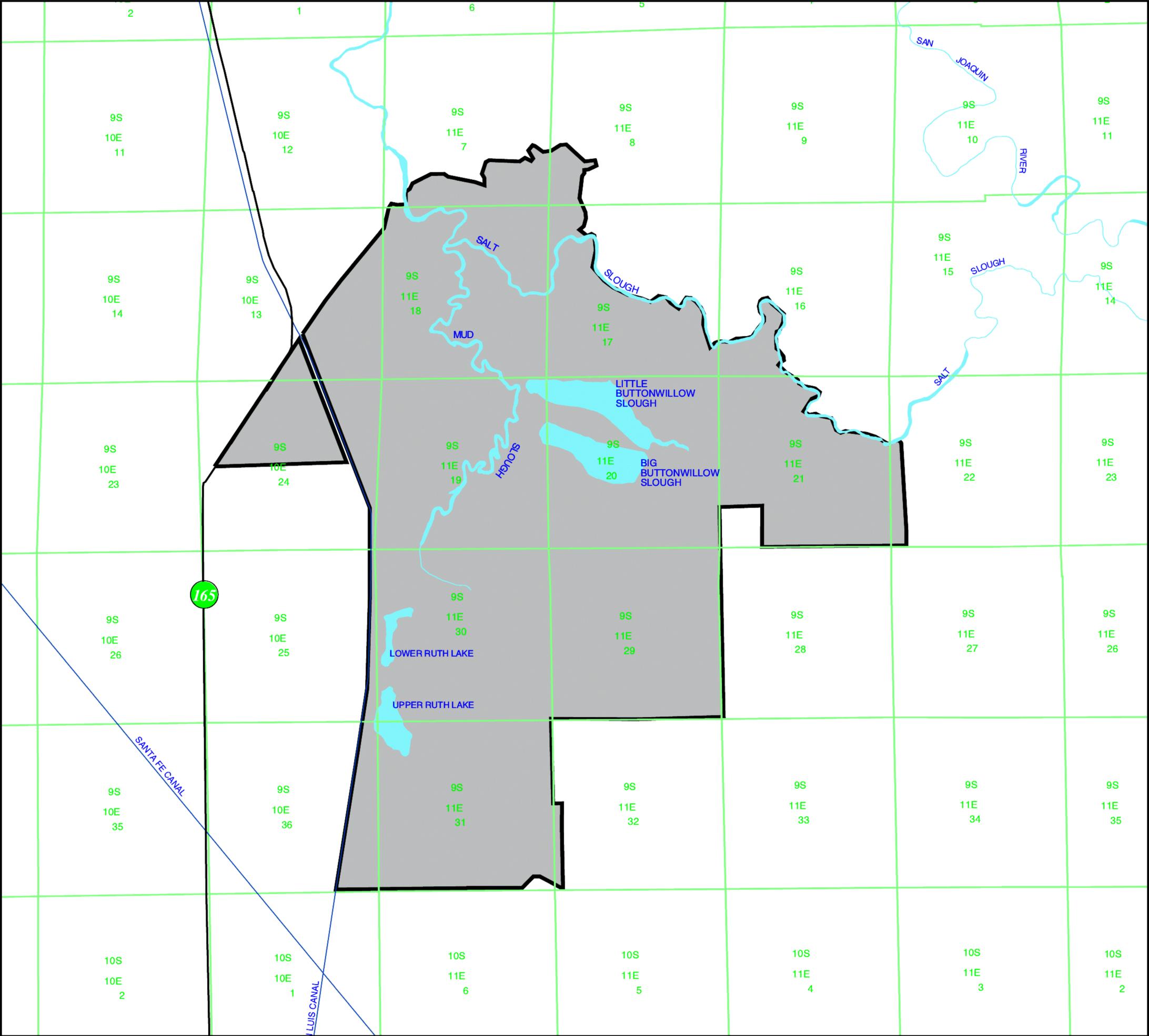
Volta WA



-  Major Roads
-  County
-  Public Land Survey System
-  Refuge



Exhibit No.
A-1



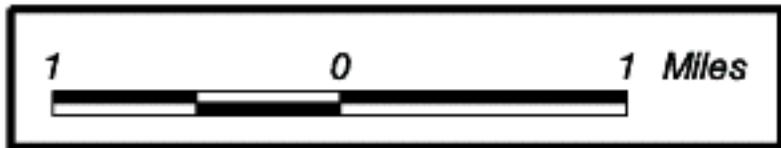
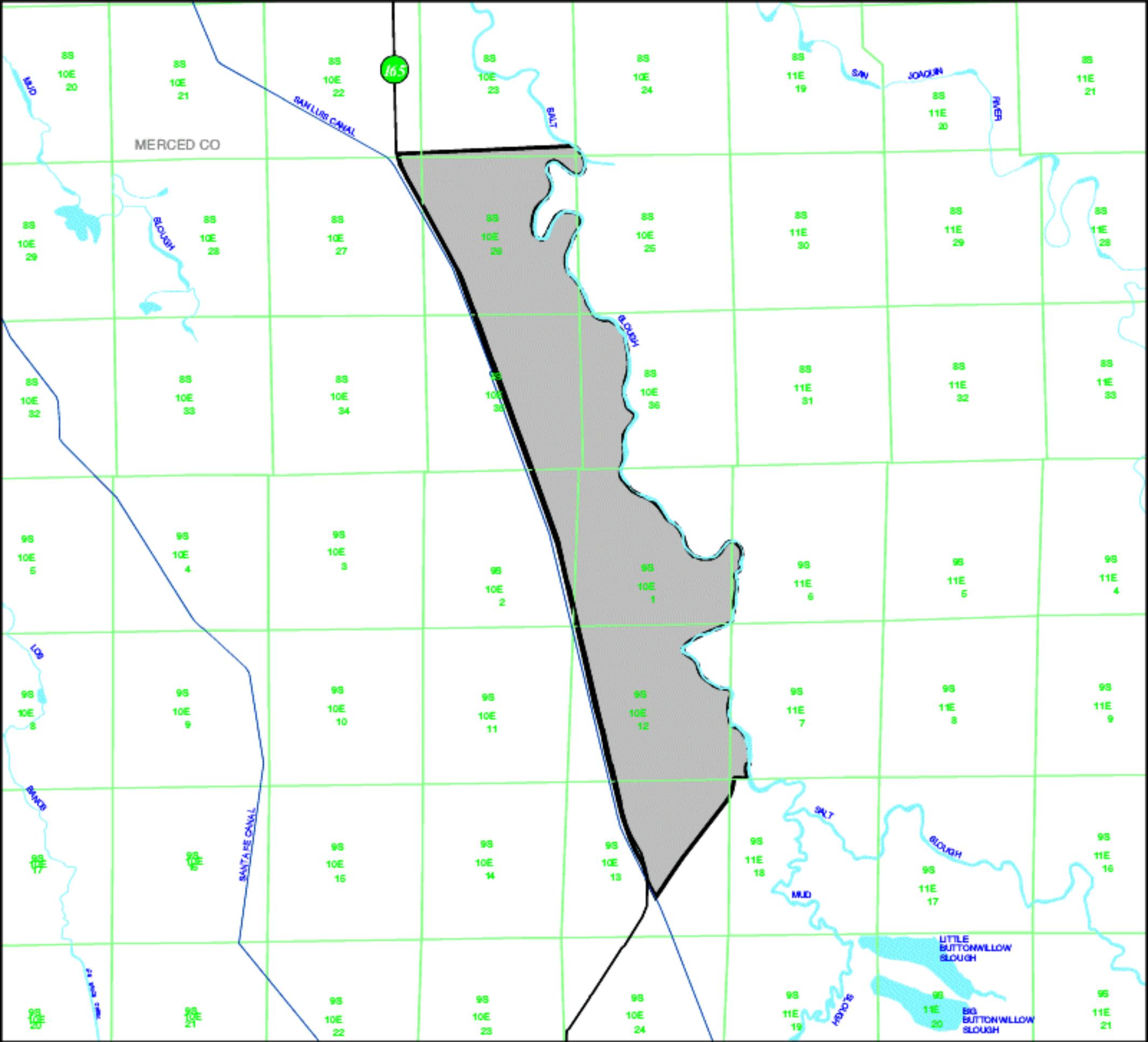
Los Banos WA



-  Major Roads
-  County
-  Public Land Survey System
-  Refuge



Exhibit No.
A-2



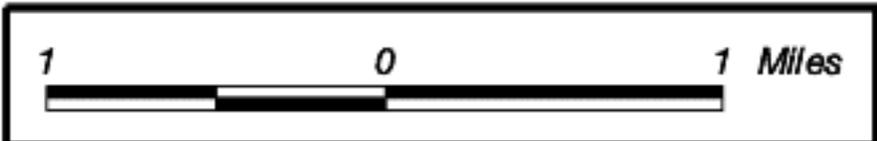
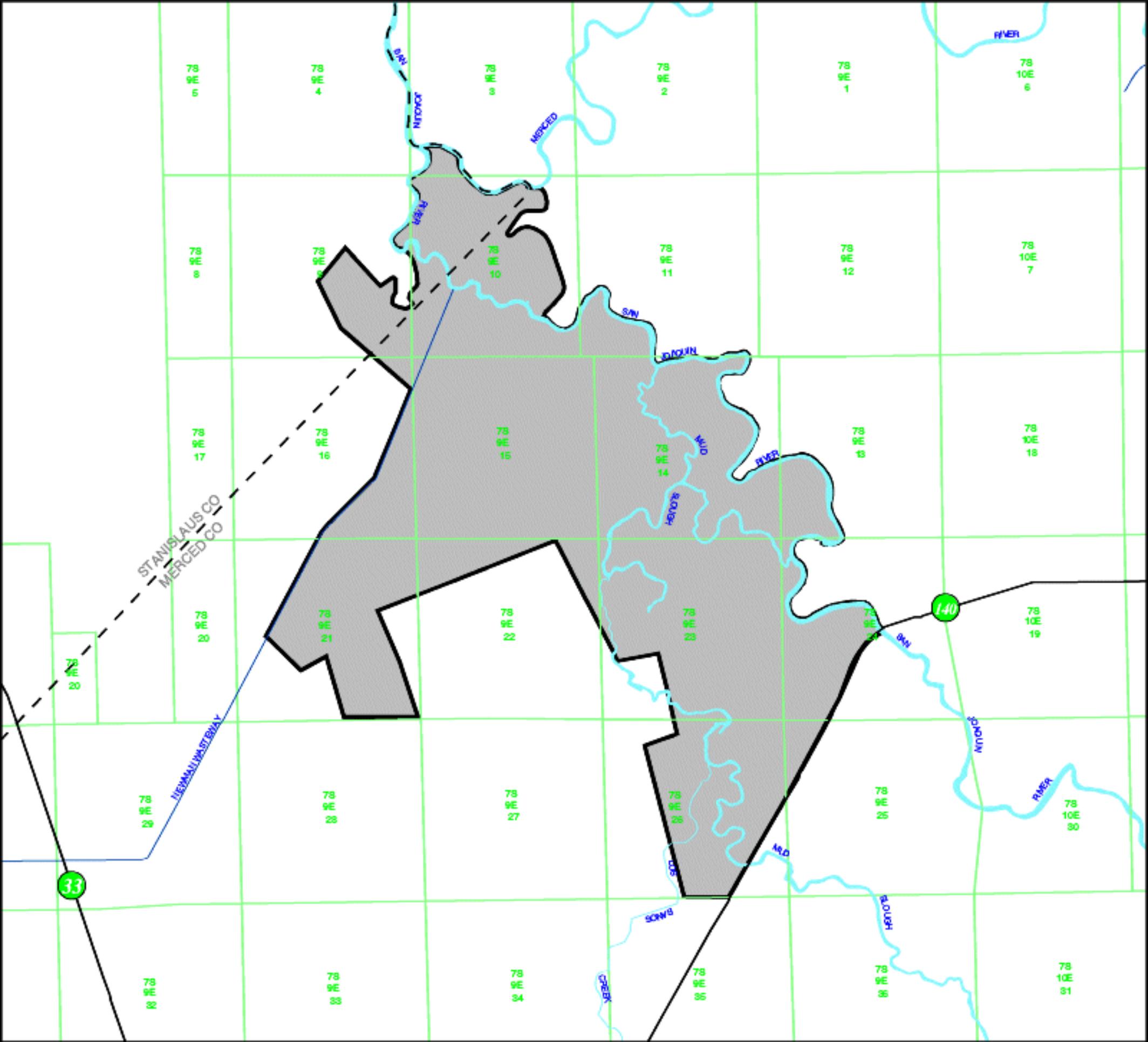
**Salt Slough Unit
North Grassland WA**



- Major Roads
- County
- Public Land Survey System
- Refuge



**Exhibit No.
A-3**



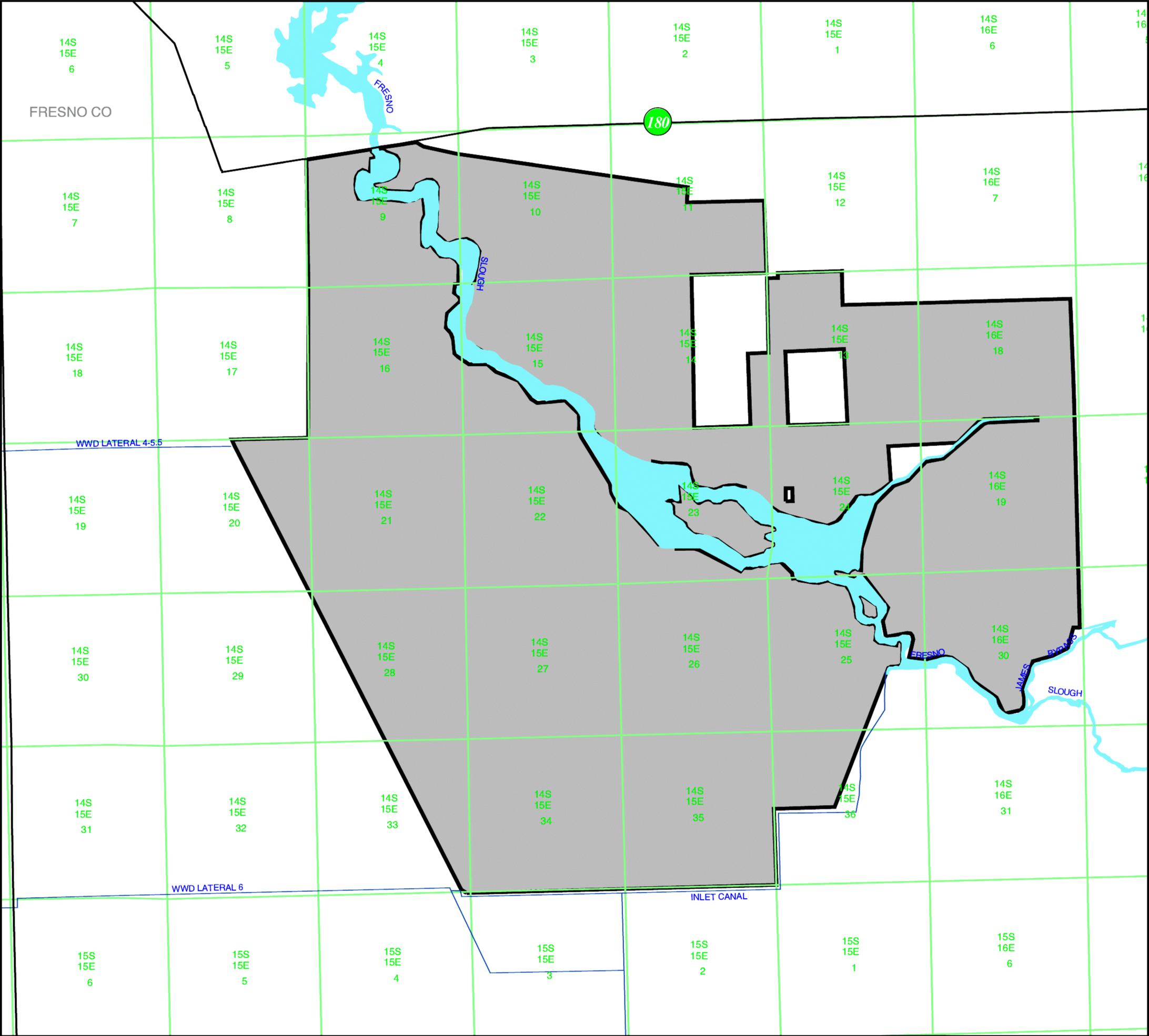
**China Island Unit
North Grassland WA**



- Major Roads
- County
- Public Land Survey System
- Refuge



**Exhibit No.
A-4**



Mendota WA



-  Major Roads
-  County
-  Public Land Survey System
-  Refuge



Exhibit No. A-5

EXHIBIT B

California Department of Fish and Game							
Note: Quantities shown below are acre-feet of water							
Refuge	Level 2 ¹ Water Supplies	Source of Level 2 Water Supplies		Incremental Level 4 ² Water Supplies	Sources of Incremental Level 4 Water Supply		Total Level 4 ³ Supplies
		Contract	Non-Project		Contract	Replacement	
Volta	10,000	13,000 ⁷	0	6,000	3,000 ⁴	3,000 ⁸	16,000
Los Banos	16,670	10,470	6,200 ⁶	8,330	8,330 ⁴	0	25,000
Salt Slough	6,680	6,680	0	3,340	3,340 ⁴	0	10,020
China Island	6,967	6,967	0	3,483	3,483 ⁴	0	10,450
Mendota	18,500	27,594 ⁵	0	11,150	2,056 ⁴	9,094 ⁸	29,650
Total	58,817	64,711	6,200⁶	32,303	20,209⁴	12,094⁸	91,120
¹ Quantity as defined in Article 1(i) of this Contract							
² Quantity as defined in Article 1(h) of this Contract							
³ Quantity as defined in Article 1(j) of this Contract							
⁴ To be acquired in accordance with Article 3(a) of this Contract							
⁵ Contract No. 14-06-200-4359A 20,143 ac.ft. (7,000 ac.ft. Section 2---1,143 ac.ft. Schedule 2---12,000 ac.ft. Section 6)							
Contract No. 14-06-200-8033A 10 ac.ft. M&I							
Contract No. 14-06-200-3342A 4,000 ac.ft. Mitigation (Note: 1,000 ac.ft. allotted to O'Neill Forebay, Contract No. 14-06-200-7451A)							
Contract No. 14-06-200-7859Z 4,441 ac.ft. (3,120 ac.ft. Supplement Water---1,321 ac.ft. Water Rights)							
⁶ Grassland Water District: 2,200 ac.ft.							
San Joaquin River Exchange Contract: 4,000 ac.ft							
⁷ Provided prior to CVPIA							
⁸ Provided prior to CVPIA - To be replaced to the Project when available and acquired from willing sources - The California Department of Fish and Game's agreement to the inclusion of this figure in this Exhibit is not intended to and should not be construed as constituting an agreement by the State of California to share the cost of acquiring this quantity of water.							
Final 01/18/01							

MEMORANDUM OF UNDERSTANDING
BETWEEN THE U.S. BUREAU OF RECLAMATION
AND
THE U.S. FISH AND WILDLIFE SERVICE
PROVIDING FOR
PROJECT AND ACQUIRED WATER SUPPLIES
TO
THE SACRAMENTO, DELEVAN, COLUSA, AND SUTTER
NATIONAL WILDLIFE REFUGES
CALIFORNIA

Table of Contents

<u>Article No.</u>		<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	1-3
1	Definitions	3-6
2	Term of Contract	7
3	Water to be Made Available and Delivered to the Contractor	7-9
4	Time for Delivery of Water	9-10
5	Point of Diversion, Measurement and Responsibility for Distribution of Water	11
6	Pooling of Water Supplies	11-12
7	Transfers, Reallocations or Exchanges of Water	12-13
8	Temporary Reductions–Return Flows	13-14
9	Water Shortage and Apportionment	14
10	Rules and Regulations	15
11	Quality of Water	15-16
12	Use of Non-Project Facilities for Water Delivery	16
13	Opinions and Determinations	16-17
14	Water Conservation	17-19
15	Existing or Acquired Water Rights	19
	Signature Page	20
	Exhibit A	
	Exhibit B	

MEMORANDUM OF UNDERSTANDING
BETWEEN THE U.S. BUREAU OF RECLAMATION
AND
THE U.S. FISH AND WILDLIFE SERVICE
PROVIDING FOR
PROJECT AND ACQUIRED WATER SUPPLIES
TO
THE SACRAMENTO, DELEVAN, COLUSA, AND SUTTER
NATIONAL WILDLIFE REFUGES
CALIFORNIA

THIS MEMORANDUM OF UNDERSTANDING (MOU), made this 19 day of January, 2001, by and between THE UNITED STATES BUREAU OF RECLAMATION (Reclamation), and THE U.S. FISH AND WILDLIFE SERVICE (Service), hereinafter called the “parties,” defines the parties’ roles and responsibilities to meet the requirements of Section 3406(d) of the Central Valley Project Improvement Act of October 30, 1992, Title XXXIV of Pub. L. No. 102-575 (CVPIA) which states, in pertinent part,”... the Secretary shall provide, either directly or through contractual agreements with other appropriate parties, firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California; ...”

EXPLANATORY RECITALS

WHEREAS, the United States has constructed and is operating the Central Valley Project, California (Project), for diversion, storage, carriage, and distribution of the waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries for the following beneficial uses, including, but not limited to, flood control, irrigation, municipal,

2 8 domestic, industrial water service, the protection, restoration and enhancement of fish, and wildlife, and
2 9 associated habitats in the Central Valley, the generation and distribution of electric energy, salinity
3 0 control, and navigation; and

3 1 WHEREAS, the wetlands of the Central Valley have declined to approximately
3 2 300,000 acres and these remaining wetlands provide critical wildlife habitat and other environmental
3 3 benefits, and important recreational and educational opportunities; and

3 4 WHEREAS, the Bureau of Reclamation’s 1989 Refuge Water Supply Report
3 5 concluded that “... it is clear that each refuge requires a dependable supply of good quality water to
3 6 facilitate proper wetland habitat management for the migratory birds of the Pacific Flyway and resident
3 7 wildlife and flora.”; and

3 8 WHEREAS, Section 3406(d) of the CVPIA requires the Secretary to provide firm
3 9 water supplies of suitable quality, through long-term contractual agreements with appropriate parties, to
4 0 maintain and improve certain wetland habitat areas in the Central Valley
4 1 in furtherance of the objectives of the Central Valley Habitat Joint Venture and the Central Valley
4 2 Project to protect, restore and enhance fish and wildlife and associated habitats; and

4 3 WHEREAS, the directives of Section 3406(d) of the CVPIA have been carried out
4 4 through a cooperative and collaborative effort between the Bureau of Reclamation and Fish and
4 5 Wildlife Service, acting for the Secretary of the Interior, the California Department of Fish and Game,
4 6 the Grassland Water District, and the Central Valley Habitat Joint Venture partners; and this
4 7 cooperative and collaborative effort is expected to continue; and

4 8 WHEREAS, Reclamation intends to use Project facilities, in part, to provide firm water
4 9 supplies of suitable quality to maintain and improve the Refuges; and

7 2 (1) The forecasted full natural inflow to Shasta Lake for the current water
7 3 year (October 1 of the preceding Calendar Year through September 30 of the current Calendar Year),
7 4 as such forecast is made by Reclamation, on or before February 20, and reviewed as frequently
7 5 thereafter as conditions and information warrant, is equal to or less than 3,200,000 acre feet: or

7 6 (2) The total accumulated actual deficiencies below 4,000,000 acre-feet in
7 7 the immediately prior water year or series of successive prior water years, each of which had inflows of
7 8 less than 4,000,000 acre-feet, together with the forecasted deficiency for the current water year exceed
7 9 800,000 acre-feet;

8 0 For the purpose of determining a Critically Dry Year, the computed inflow to
8 1 Shasta Lake under present upstream development above Shasta Lake shall be used as the full natural
8 2 inflow to Shasta Lake. In the event that major construction completed above Shasta Lake materially
8 3 alters the present regimen of the stream systems contributing to Shasta Lake, the computed inflow to
8 4 Shasta Lake used to define a Critically Dry Year will be adjusted to eliminate the effect of such material
8 5 alterations.

8 6 After consultation with the State, the National Weather Service, and other
8 7 recognized forecasting agencies, Reclamation shall select the forecast to be used and will make the
8 8 details of it available to the Service. The same forecast used by Reclamation for operation of the
8 9 Project shall be used to make forecasts hereunder.

9 0 (e) "CVPIA" shall mean the Central Valley Project Improvement
9 1 Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

9 2 (f) "Delivered Water" shall mean the Level 2 Water Supplies and the Incremental
9 3 Level 4 Water Supplies diverted by the Service pursuant to this MOU at the Point(s) of Delivery in

9 4 accordance with Article 4(c) of this MOU;

9 5 (g) “Hydrologic Circumstances” shall mean the conditions described in subdivision
9 6 (d) of this Article;

9 7 (h) “Incremental Level 4 Water Supplies” shall mean the difference between the
9 8 Level 2 Water Supplies and the Level 4 Water Supplies depicted in Exhibit “B”;

9 9 (i) "Level 2 Water Supplies" shall mean the quantities of water referred to in
1 0 0 section 3406 (d)(1) of the CVPIA and depicted in Exhibit “B” of this MOU;

1 0 1 (j) “Level 4 Water Supplies” shall mean the quantities of water referred to in
1 0 2 section 3406 (d)(2) of the CVPIA and depicted in Exhibit “B” of this MOU;

1 0 3 (k) “Non-Project Facilities” shall mean any non-Project water conveyance or
1 0 4 storage facilities;

1 0 5 (l) “Non-Project Water” shall mean water or water rights, other than “Project
1 0 6 Water”, acquired, appropriated by, transferred to or assigned to the Service or, transferred to the
1 0 7 United States for delivery to one or more of the Service’s Refuges, as identified in Exhibit “B”;

1 0 8 (m) “Point(s) of Delivery” shall mean the location(s) established and revised
1 0 9 pursuant to Article 5(a) of this MOU , at which Level 2 Water Supplies of Project Water and
1 1 0 Incremental Level 4 Water Supplies are deemed to be delivered to the Service and at which the
1 1 1 Service shall assume the responsibility for the further control, carriage, handling, use, disposal or
1 1 2 distribution of such water supplies so long as such water supplies are being used in accordance with the
1 1 3 terms and conditions of this MOU;

1 1 4 (n) “Project” shall mean the Central Valley Project owned by the United States
1 1 5 and managed by the Department of the Interior, Bureau of Reclamation;

1 1 6 (o) "Project Water" shall mean all water that is developed, diverted, stored, or
1 1 7 delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in
1 1 8 accordance with the terms and conditions of applicable water rights acquired pursuant to California
1 1 9 law;

1 2 0 (p) "Refuge(s)" shall mean the lands in the units of the National Wildlife Refuge
1 2 1 System in the Central Valley of California; Gray Lodge, Los Banos, Volta, North Grasslands and
1 2 2 Mendota state wildlife management areas; and the Grassland Resource Conservation District all
1 2 3 identified in the Refuge Water Supply Report and the land(s) identified in the San Joaquin Basin Action
1 2 4 Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation as set forth in
1 2 5 Section 3406(d) of the CVPIA and/or as revised in accordance with subdivision (b) of this Article;

1 2 6 (q) "Refuge Water Supply Report" shall mean the report issued by the Mid-Pacific
1 2 7 Region of the Bureau of Reclamation of the United States Department of the Interior entitled "Report
1 2 8 on Refuge Water Supply Investigations, Central Valley Hydrologic Basin, California" (March 1989);

1 2 9 (r) "Secretary" shall mean the Secretary of the Interior, a duly appointed
1 3 0 successor, or an authorized representative acting pursuant to any authority of the Secretary through any
1 3 1 agency of the Department of the Interior;

1 3 2 (s) "Year" shall mean the period from and including March 1 of
1 3 3 each Calendar Year through the last day of February of the following Calendar Year;

1 3 4 TERM OF MOU

1 3 5 2. (a) This MOU shall be effective on March 1, 2001 and shall remain in effect
1 3 6 through February 28, 2026.

1 3 7 (b) Upon request by the Service, this MOU shall be renewed for successive periods of
1 3 8 twenty-five (25) years each, subject to the terms and conditions mutually agreeable to the parties. The
1 3 9 Service shall request renewal of the MOU at least two (2) years prior to the date on which this MOU
1 4 0 expires.

1 4 1 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE SERVICE

1 4 2 3. (a) During each Year, consistent with State water rights, permits and licenses,
1 4 3 federal law, and subject to the provisions set forth in Articles 8 and 9 of this MOU, Reclamation shall
1 4 4 make available at the established Point(s) of Delivery, and/or convey to the Service the maximum
1 4 5 quantities of Project Water and Non-Project Water, respectively, required to provide each of the
1 4 6 Refuges with the Level 2 Water Supplies set forth in Exhibit “B” and the Incremental Level 4 Water
1 4 7 Supplies set forth in Exhibit “B”. The quantities of Level 2 Water Supplies and Incremental Level 4
1 4 8 Water Supplies made available and/or conveyed to the Service shall be scheduled in accordance with
1 4 9 the provisions of Article 4 of this MOU; Provided, that, Section 3406(d)(2) of the CVPIA provides
1 5 0 that the Incremental Level 4 Water Supplies shall be acquired in cooperation with the State of
1 5 1 California and in consultation with the Central Valley Habitat Joint Venture and other interests in
1 5 2 cumulating increments of not less than ten percent per annum, from the date the CVPIA was enacted,
1 5 3 through voluntary measures which include, but are not limited to, water conservation, conjunctive use,
1 5 4 purchase, lease, donations, or similar activities, or a combination of such activities which do not require
1 5 5 involuntary reallocation of Project yield, water being provided as all or part of the Incremental Level 4
1 5 6 Water Supplies for each of the Refuges can be made available only to the extent that Reclamation is
1 5 7 able to acquire the Incremental Level 4 Water Supplies from willing sources; Accordingly, Reclamation
1 5 8 shall use its best efforts to acquire the Incremental Level 4 Water Supplies and shall coordinate

1 5 9 acquisitions of Level 4 Water Supplies with acquisitions of Environmental Water Account (EWA)
1 6 0 water pursuant to the Operating Principles Agreement, dated August 28, 2000, attached to the Record
1 6 1 of Decision for the CALFED Bay-Delta Program, dated August 28, 2000, and/or other acquisitions of
1 6 2 water for environmental purposes to ensure that acquisitions of Incremental Level 4 Water Supplies
1 6 3 have a priority at least equal to acquisitions of EWA and/or other environmental water each year.
1 6 4 Reclamation also agrees that the Interagency Refuge Management Team, created pursuant to Article 6
1 6 5 of this Contract, shall be included among the interests consulted in acquiring Incremental Level 4 Water
1 6 6 Supplies.

1 6 7 (b) The Service shall continue use of the Non-Project Water component of the
1 6 8 Level 2 Water Supplies set forth in Exhibit "B" as long as such Non-Project Water remains available to
1 6 9 the Service and is of suitable quality. In the event that such water supply is unavailable to the Service,
1 7 0 or is not of suitable quality, subject to the provisions set forth in Articles 8 and 9 of this MOU,
1 7 1 Reclamation shall deliver to the Service sufficient substitute Project Water to ensure that the quantities
1 7 2 of Level 2 Water Supplies are available to the Service in accordance with subdivision (a) of this Article.

1 7 3 (c) The Service shall comply with all requirements of any biological opinion(s)
1 7 4 addressing the execution of this MOU developed pursuant to Section 7 of the Endangered Species Act
1 7 5 of 1973, as amended, which are applicable to each of the Refuge(s) and comply with environmental
1 7 6 requirements applicable to each of the Refuge(s) as may be required for specific activities.

1 7 7 (d) The Service shall make reasonable and beneficial use of all Delivered Water
1 7 8 furnished pursuant to this MOU consistent with the wetland habitat water management plan(s)
1 7 9 described in Article 14 of this MOU.

1 8 0 (e) In order to maximize water available to Refuges and better manage such water,

1 8 1 the Service may request Reclamation's permission to reschedule a portion of the Level 2 Water
1 8 2 Supplies and/or a portion of the Incremental Level 4 Water Supplies made available to the Service for
1 8 3 use within the Service's Boundary during the current Year for use within the subsequent Year.
1 8 4 Reclamation may permit such rescheduling in accordance with applicable law, and the then-current
1 8 5 applicable rescheduling guidelines and policies. Upon execution of this MOU, Reclamation shall have
1 8 6 adopted amendments to any applicable rescheduling guidelines and policies to provide for the
1 8 7 rescheduling of refuge water in accordance with this Article. After execution of this MOU and annually
1 8 8 thereafter, Reclamation shall provide the Service with a copy of the then-current rescheduling
1 8 9 guidelines and policies.

1 9 0 (f) Reclamation shall not interfere with the Service's right pursuant to Federal
1 9 1 Reclamation law and applicable California law to the beneficial use of water furnished pursuant to this
1 9 2 MOU so long as the Service fulfills all of its obligations under this MOU. A reduction in water supplies
1 9 3 pursuant to Article 9 of this MOU shall not be deemed to constitute such interference.

1 9 4 TIME FOR DELIVERY OF WATER

1 9 5 4. (a) On or about February 20 of each Calendar Year, Reclamation shall provide the
1 9 6 Service, in writing, with a preliminary forecast of whether the upcoming Year will be a Critically Dry
1 9 7 Year; and, if a Critically Dry Year is forecast, the extent to which Level 2 Water Supplies to be made
1 9 8 available to the Service during the upcoming Year are to be shorted pursuant to Article 9 of this MOU;
1 9 9 and the amount of Incremental Level 4 Water Supplies estimated to be made available to the Service
2 0 0 pursuant to this MOU for the upcoming Year. The forecast will be updated monthly, as necessary,
2 0 1 based on then-current hydrologic conditions. Upon the request of the Service, Reclamation shall make
2 0 2 available to the Service the data on which Reclamation relied to determine whether the Year in question

203 will or will not be a Critically Dry Year and to determine the amounts of Level 2 Water Supplies and
204 Incremental Level 4 Water Supplies to be made available to the Service pursuant to this MOU during a
205 Critically Dry Year.

206 (b) Based on the forecast(s) referred to in subdivision (a) of this Article, on or
207 before March 1 of each Calendar Year, the Service shall submit to Reclamation a written schedule,
208 satisfactory to Reclamation, showing both the monthly and annual quantities of Level 2 Water Supplies
209 and Incremental Level 4 Water Supplies to be delivered by Reclamation to each of the Refuges
210 pursuant to this MOU. Each schedule shall be updated on a monthly basis to reflect actual use and
211 remaining estimated needs.

212 (c) In accordance with subdivision (a) of Article 3 of this MOU, Reclamation shall
213 make available and/or convey Level 2 Water Supplies and Incremental Level 4 Water Supplies for
214 diversion by the Service at the Points of Delivery in accordance with the schedule submitted by the
215 Service pursuant to subdivision (b) of this Article, or any written revision(s) thereto, mutually agreed to
216 by Reclamation and the Service which are submitted to Reclamation within a reasonable time prior to
217 the date(s) on which the requested change(s) is/are to be implemented.

218 POINT OF DIVERSION, MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION
219 OF WATER

220 5. (a) The original Point(s) of Delivery shall be established by written mutual
221 agreement of the Service and Reclamation. Such Point(s) of Delivery may be revised without amending
222 this MOU upon written mutual agreement of Reclamation and the Service.

223 (b) All water delivered to the Service pursuant to this MOU is to be measured at
224 the Point(s) of Delivery to reflect the quantities of Level 2 Water Supplies and Incremental Level 4

2 2 5 Water Supplies delivered to the Service’s Boundary. Upon the request of the Service or on
2 2 6 Reclamation’s own initiative, Reclamation shall investigate the accuracy of such measurements and the
2 2 7 parties will jointly take any necessary steps to adjust any errors appearing therein. For any period of
2 2 8 time when accurate measurement has not been made, Reclamation shall consult with the Service prior
2 2 9 to making a determination of the quantity of Delivered Water for that period of time. The Service shall
2 3 0 advise Reclamation on or before the 10th calendar day of each month of the quantities of Level 2
2 3 1 Water Supplies and Incremental Level 4 Water Supplies taken during the preceding month at the
2 3 2 Point(s) of Delivery.

2 3 3 (c) Reclamation shall not be responsible for the control, carriage, handling, use,
2 3 4 disposal, or distribution of water delivered to the Service pursuant to this MOU beyond the Point(s) of
2 3 5 Delivery specified in subdivision (a) of this Article.

2 3 6 POOLING OF WATER SUPPLIES

2 3 7 6. (a) Whenever the maximum quantities of Level 2 Water Supplies and/or the
2 3 8 Incremental Level 4 Water Supplies depicted in Exhibit “B” are reduced pursuant to Article 9 of this
2 3 9 MOU, the remaining Level 2 Water Supplies and/or the Incremental Level 4 Water Supplies may be
2 4 0 pooled for use on other Refuge(s); Provided, that no individual Refuge shall receive more Level 2
2 4 1 Water Supplies than would have been made available to it absent a reduction pursuant to Article 9 of
2 4 2 this MOU; or be reduced by more than twenty-five (25) percent; Provided further, that Reclamation
2 4 3 makes a written determination that pooling of water for use on other Refuge(s) would not have an
2 4 4 adverse impact, that cannot be reasonably mitigated, on Project operations, other Project Contractors,
2 4 5 or other Project purposes; Provided further, that Reclamation determines that such reallocation is
2 4 6 permitted under the terms and conditions of the applicable underlying water right permit and/or license;

2 4 7 and Provided still further, that water made available under this MOU may not be scheduled for
2 4 8 delivery outside the Service’s Boundary without prior written approval of Reclamation.

2 4 9 (b) An Interagency Refuge Water Management Team, to be chaired by
2 5 0 Reclamation and to be established upon execution of this MOU, shall be entitled to collaboratively
2 5 1 allocate the pooled water supplies and provide a schedule for delivery of the pooled supplies to meet
2 5 2 the highest priority needs of the Refuge(s) as depicted in Exhibit “B”; Provided, however, nothing in this
2 5 3 Article is intended to require the Service to pool the water supply provided for in this MOU. The
2 5 4 Interagency Refuge Water Management Team shall be composed of designees of the Bureau of
2 5 5 Reclamation, the United States Fish and Wildlife Service, the California Department of Fish and Game,
2 5 6 and the Grassland Water District.

2 5 7 TRANSFERS, REALLOCATIONS OR EXCHANGES OF WATER

2 5 8 7. Subject to the prior written approval of Reclamation, the Project Water made available
2 5 9 under this MOU may be transferred, reallocated or exchanged in that Year to other Refuge(s) or
2 6 0 Project contractors if such transfer, reallocation or exchange is requested by the Service and is
2 6 1 authorized by applicable Federal and California State laws, and then-current applicable guidelines or
2 6 2 regulations.

2 6 3 TEMPORARY REDUCTIONS--RETURN FLOWS

2 6 4 8. (a) Consistent with the authorized purposes and priorities of the Project and the
2 6 5 requirements of Federal law, Reclamation shall make all reasonable efforts to optimize water deliveries
2 6 6 to the Service as provided in this MOU.

2 6 7 (b) The quantity of water to be delivered to the Service as herein provided may be
2 6 8 temporarily discontinued or reduced when investigation, inspection, maintenance, repair, or replacement

2 6 9 of any of the Project facilities and/or Non-Project Facilities or any part thereof necessary for the
2 7 0 delivery of water to the Service is required. Reclamation shall give and/or arrange to have the
2 7 1 owner/operator of Non-Project Facilities give the Service due written notice in advance of such
2 7 2 temporary discontinuance or reduction, except in case of an emergency, when no advance notice is
2 7 3 possible, in which case Reclamation shall notify and/or arrange to have the owner/operator of the Non-
2 7 4 Project Facilities notify the Service of said discontinuance or reduction as soon as is feasible; Provided,
2 7 5 that Reclamation shall use its best efforts to avoid any discontinuance or reduction in such service.
2 7 6 Upon resumption of service after such reduction or discontinuance, and if requested by the Service,
2 7 7 Reclamation will make all reasonable efforts, consistent with other obligations and operational
2 7 8 constraints, to deliver the quantity of water which would have been delivered hereunder in the absence
2 7 9 of such discontinuance or reduction.

2 8 0 (c) The United States reserves the right to all seepage and return flow water
2 8 1 derived from Delivered Water which escapes or is discharged beyond the Service's Boundary;
2 8 2 Provided, that this shall not be construed as claiming for the United States any right to seepage or return
2 8 3 flow being put to beneficial use pursuant to this MOU within the Service's Boundary by the Service or
2 8 4 those claiming by, through, or under the Service.

2 8 5 WATER SHORTAGE AND APPORTIONMENT

2 8 6 9. (a) In a Critically Dry Year, Reclamation may temporarily reduce, for that Year,
2 8 7 the availability of Level 2 Water Supplies up to twenty-five (25) percent of the maximum quantities set
2 8 8 forth in Exhibit "B" whenever reductions due to Hydrologic Circumstances are imposed upon
2 8 9 agricultural deliveries of Project Water; Provided, that such reductions shall not exceed in percentage
2 9 0 terms the reductions imposed on agricultural service contractors. The quantity of Non-Project Water

291 available to one or more of the Refuges as part of its/their Level 2 Water Supplies may be reduced by
292 more than twenty-five (25) percent in Years when the quantity of Project Water made available to the
293 Service can be reduced by no more than twenty-five (25) percent. In such cases, Reclamation shall
294 make up the supply difference with water supplies provided by Reclamation to ensure that Level 2
295 Water Supplies from all sources are not reduced by more than twenty-five (25) percent.

296 (b) Reductions in the Level 2 Water Supplies to be made available to the individual
297 Refuge(s) pursuant to this MOU, shall be imposed only in a Critically Dry Year. For the Incremental
298 Level 4 Water Supplies provided from Non-Project Water and Project Water, reductions shall be
299 imposed in accordance with the priority or priorities that were applied to such Non-Project Water and
300 the shortages assigned to Project Water prior to its transfer or acquisition as Incremental Level 4 Water
301 Supplies.

302 RULES AND REGULATIONS

303 10. The parties agree that the delivery of water pursuant to this MOU is subject to Federal
304 Reclamation law, as may be amended and supplemented, as applicable, and the rules and regulations
305 promulgated by the Secretary of the Interior under Federal Reclamation law.

306 QUALITY OF WATER

307 11. (a) Consistent with other legal obligations, the water delivered by Reclamation to
308 the Service pursuant to this MOU shall be of suitable quality to maintain and improve wetland habitat
309 areas and of comparable quality to water provided to other Project purposes within the same

3 1 0 geographical areas; Provided, that Reclamation is under no obligation to construct or furnish water
3 1 1 treatment facilities to maintain or to improve the quality of the water furnished to the Service pursuant to
3 1 2 this MOU. The quality of Delivered Water may be monitored by the Service at the Point(s) of Delivery
3 1 3 on an as needed basis. Should Reclamation, in consultation with the Service, determine that the Level 2
3 1 4 Water Supplies and/or the Level 4 Water Supplies to be made available to the Service pursuant to this
3 1 5 MOU during all or any part of a Year will not be of the quality that the Service feels is suitable to
3 1 6 maintain and improve wetland habitat areas, the Service and Reclamation shall meet within 48 hours or
3 1 7 at a time mutually agreeable to the parties and determine the appropriate actions necessary to identify
3 1 8 and address the source of the water quality problems.

3 1 9 (b) The operation and maintenance of Project facilities shall be performed in such
3 2 0 manner as is practicable to maintain the quality of raw water made available through such facilities at the
3 2 1 highest level reasonably attainable as determined by Reclamation. The Service shall be responsible for
3 2 2 compliance with all State of California and Federal water quality standards and directives applicable to
3 2 3 surface return flows and subsurface agricultural drainage discharges generated within its boundaries
3 2 4 arising from water conveyed to the Refuges pursuant to this MOU. This MOU does not create any
3 2 5 obligation on Reclamation to provide drainage services.

3 2 6 USE OF NON-PROJECT FACILITIES FOR WATER DELIVERY

3 2 7 12. Any use of Non-Project Facilities, including use of State Water Project facilities
3 2 8 pursuant to Joint Point of Diversion or other use of State Water Project facilities to deliver the water
3 2 9 supplies provided for in the MOU, or any agreement for the use of such Non-Project Facilities, shall in
3 3 0 no way alter the obligation of Reclamation to make available and deliver water supplies in accordance
3 3 1 with all of the terms and conditions of this MOU. In addition, any costs incurred in the use of Non-

3 3 2 Project Facilities to deliver water supplies pursuant to this MOU shall be paid for in accordance with
3 3 3 Section 3406(d)(3) of the CVPIA.

3 3 4 OPINIONS AND DETERMINATIONS

3 3 5 13. (a) Where the terms of this MOU provide for actions to be based upon the opinion
3 3 6 or determination of either party to this MOU, said terms shall not be construed as permitting such
3 3 7 action to be predicated upon opinions or determinations that are arbitrary, capricious or unreasonable.
3 3 8 Both parties, notwithstanding any other provisions of this MOU, expressly reserve the right to seek
3 3 9 relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or
3 4 0 determination. Each opinion or determination by either party shall be provided in a timely manner.
3 4 1 Nothing in this subdivision of this Article is intended to or shall affect or alter the standard of judicial
3 4 2 review applicable under federal law to any opinion or determination implementing a specific provision of
3 4 3 federal law embodied in statute or regulation.

3 4 4 (b) Both parties to this MOU shall have the right to make determinations
3 4 5 necessary to administer this MOU that are consistent with the provisions of this MOU, the laws of the
3 4 6 United States and of California, and the rules and regulations promulgated by the Secretary of the
3 4 7 Interior. Each party shall make such determinations in consultation with the other party to the extent
3 4 8 reasonably practicable.

3 4 9 WATER CONSERVATION

3 5 0 14. (a) The Service shall prepare individual refuge wetland habitat water management
3 5 1 plan(s) in order to ensure the effective use of water supplies to meet wetland resource needs and to
3 5 2 meet the objectives of the Central Valley Habitat Joint Venture and the purposes of the CVPIA to
3 5 3 maintain and improve certain Central Valley wetland habitat areas. Criteria to prepare and evaluate

3 5 4 refuge wetland habitat water management plan(s) shall be developed by the Interagency Refuge Water
3 5 5 Management Team within one (1) year of the execution of this MOU, and reviewed and updated every
3 5 6 five (5) years thereafter taking into consideration the provisions of the Interagency Coordinated
3 5 7 Program Task Force report dated June 1998. The criteria shall include economically feasible water
3 5 8 management measures which can improve the Services' efficient use of water in a manner appropriate
3 5 9 for wetland and wildlife management, and shall also include time schedules for meeting the water use
3 6 0 efficiency and conservation objectives. The criteria shall grant substantial deference to on-going state
3 6 1 efforts related to wetlands water management and shall take into account the unique requirements
3 6 2 associated with water use for the maintenance and enhancement of wetland and wildlife habitat. The
3 6 3 Service shall make all reasonable efforts to complete the original wetland habitat water management
3 6 4 plan(s) within one (1) year of the establishment of the criteria. Reclamation will review and determine if
3 6 5 the wetland habitat water management plan(s) meet the established criteria for evaluating said plan
3 6 6 within ninety (90) days of receipt of each plan.

3 6 7 (b) Prior to the Service being afforded opportunities such as pooling
3 6 8 and rescheduling of water supplies pursuant to Articles 3 and 6 of this MOU, the Service must be
3 6 9 implementing a wetland habitat water management plan that has been determined by Reclamation to
3 7 0 meet the established criteria developed pursuant to subdivision (a) of this Article for preparing and
3 7 1 evaluating said plan. Continued pooling and rescheduling benefits pursuant to Articles 3 and 6 of this
3 7 2 MOU shall be contingent upon the Service's continued implementation of such wetland habitat water
3 7 3 management plans. In the event Reclamation determines the Service is unable to implement its wetland
3 7 4 habitat water management plan, due to circumstances beyond its control, the benefits of Articles 3 and
3 7 5 6 of this MOU shall be continued so long as the Service diligently works with Reclamation to obtain

3 7 6 such determination at the earliest practicable date, and thereafter the Service begins implementing its
3 7 7 wetland habitat water management plan immediately after the circumstances preventing implementation
3 7 8 have ceased.

3 7 9 (c) In the event that implementation of the wetland habitat water management
3 8 0 plan(s) prepared pursuant to subdivision (a) of this Article results in water savings, all conserved water
3 8 1 supplies may be transferred/reallocated, under the terms and conditions of this MOU, to other wetland,
3 8 2 wildlife and fishery needs or to other Project contractors in accordance with the recommendations of
3 8 3 the Interagency Refuge Water Management Team established pursuant to Article 6 of this MOU;
3 8 4 Provided, that Reclamation makes a written determination that such transfer/reallocation of conserved
3 8 5 water would not have an adverse impact, that cannot be reasonably mitigated, on Project operations,
3 8 6 other Project Contractors or other Project purposes; Provided further, that the transfer/reallocation is
3 8 7 requested by the Service and Reclamation determines that the transfer/reallocation is authorized by
3 8 8 applicable laws, and then-current applicable guidelines and/or regulations.

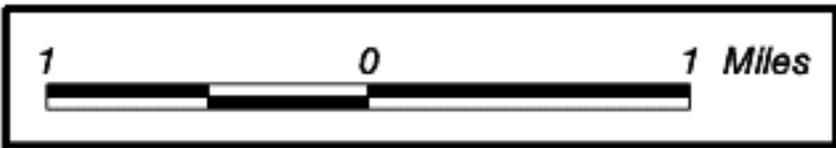
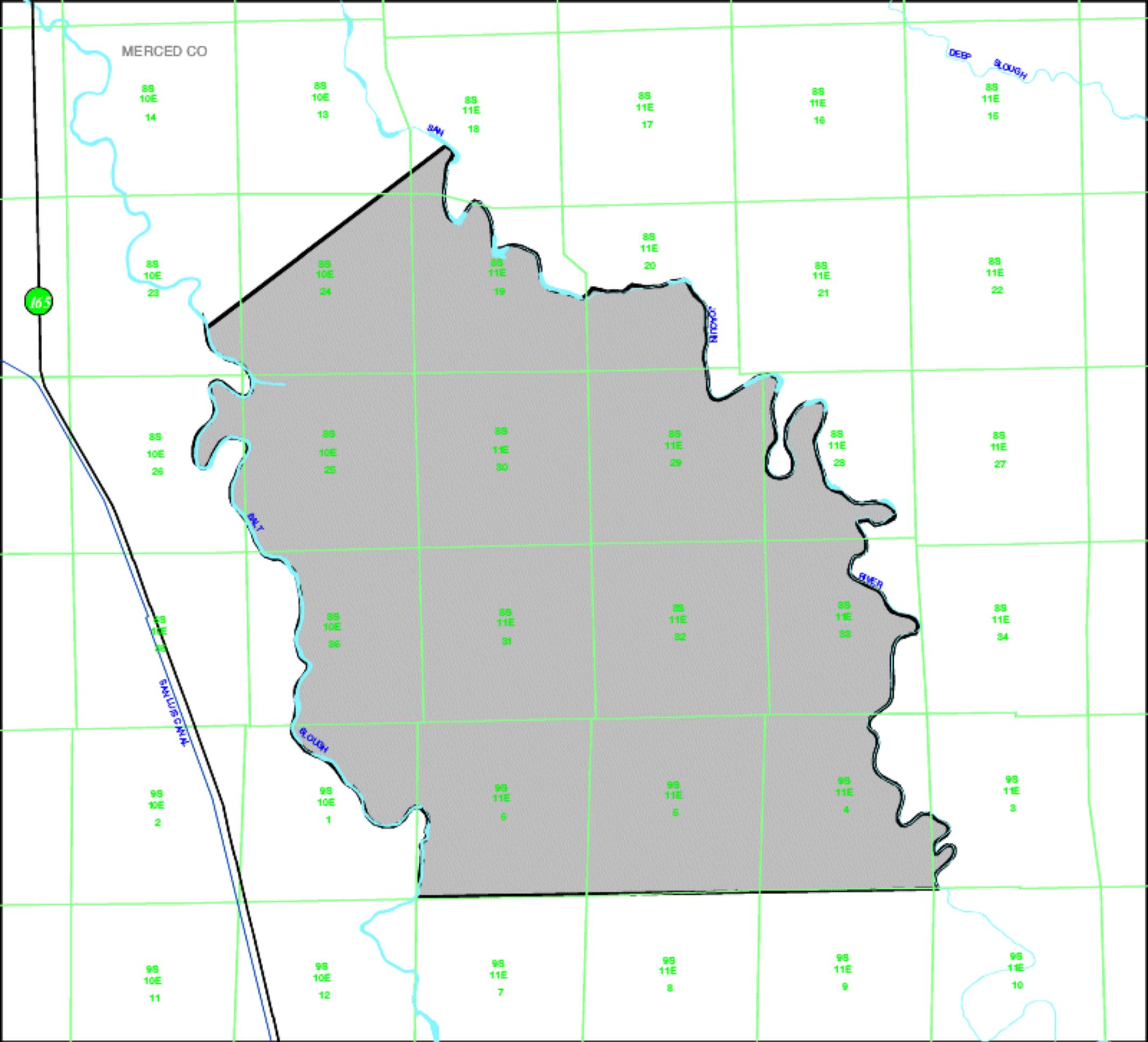
3 8 9 (d) The Service shall submit to Reclamation an annual update on the status of its
3 9 0 implementation of the wetland habitat water management plan(s) for the previous Water Year.

3 9 1 (e) At five (5) year intervals, the Service shall revise its wetland habitat water
3 9 2 management plan(s), as necessary, to reflect the then-current criteria for preparing and evaluating said
3 9 3 plans and submit such revised plan(s). Upon completion of such revised plan(s), the Service shall
3 9 4 submit such revised plan(s) to Reclamation for review and so Reclamation can determine whether such
3 9 5 plan(s) meet the then-current criteria.

3 9 6 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

3 9 7 15. Except as provided in subdivision (b) of Article 3, the exercise of existing water rights

398 by the Service, or its acquisition of additional water or water rights from other than the United States,
399 shall not alter the obligation of Reclamation to provide the maximum quantities of Level 2 Water
400 Supplies and Incremental Level 4 Water Supplies under subdivision (a) of Article 3 of this MOU.



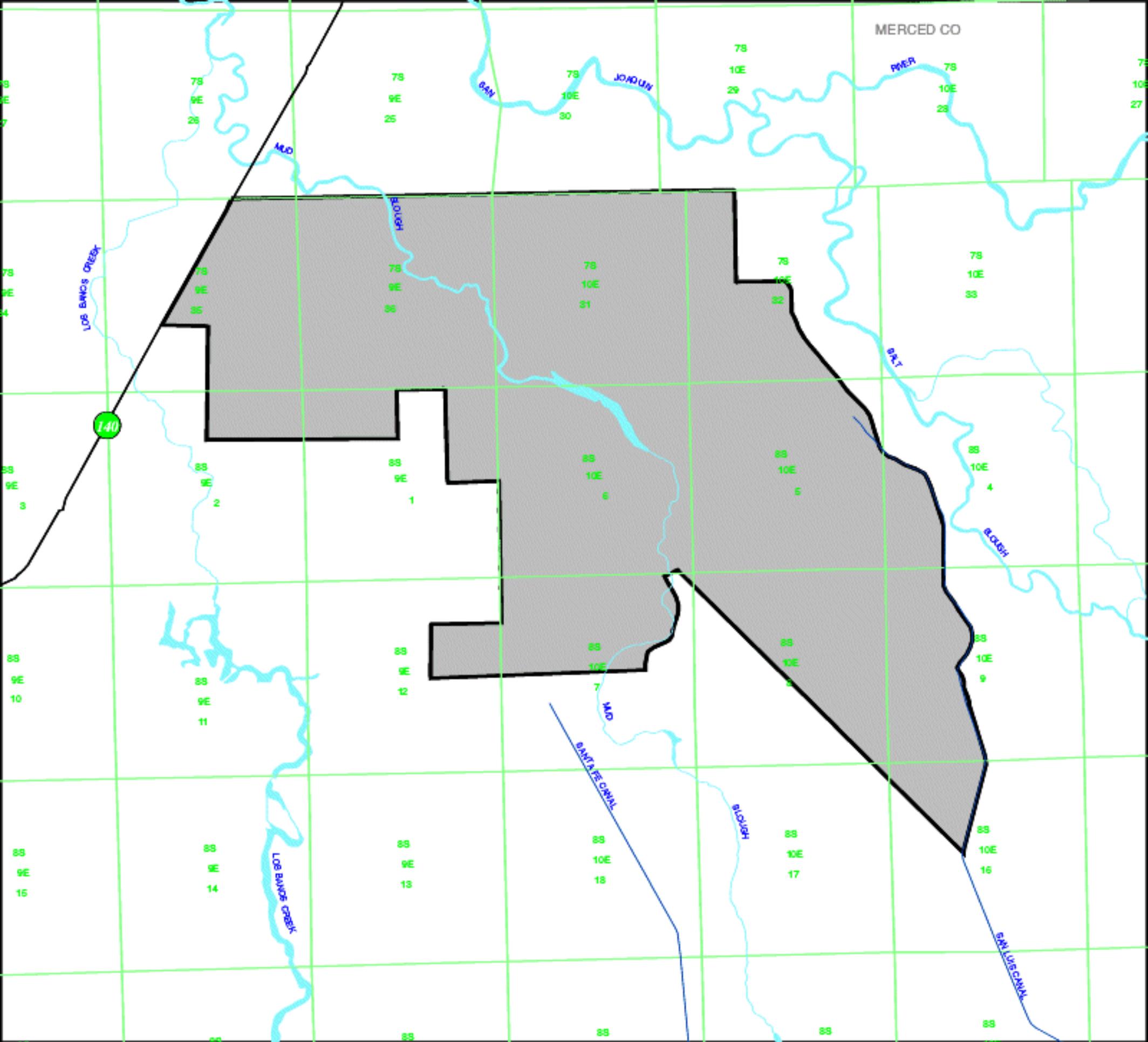
San Luis Unit
San Luis NWR



- Major Roads
- - - County
- Public Land Survey System
- Refuge

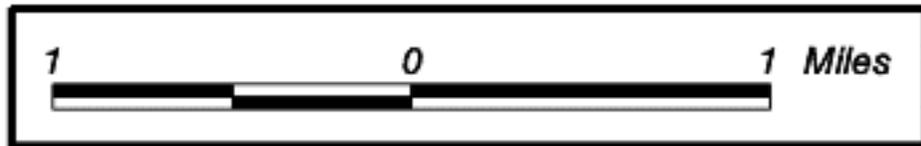


Exhibit No.
A-1



MERCED CO

140



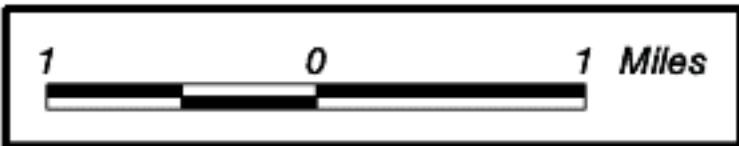
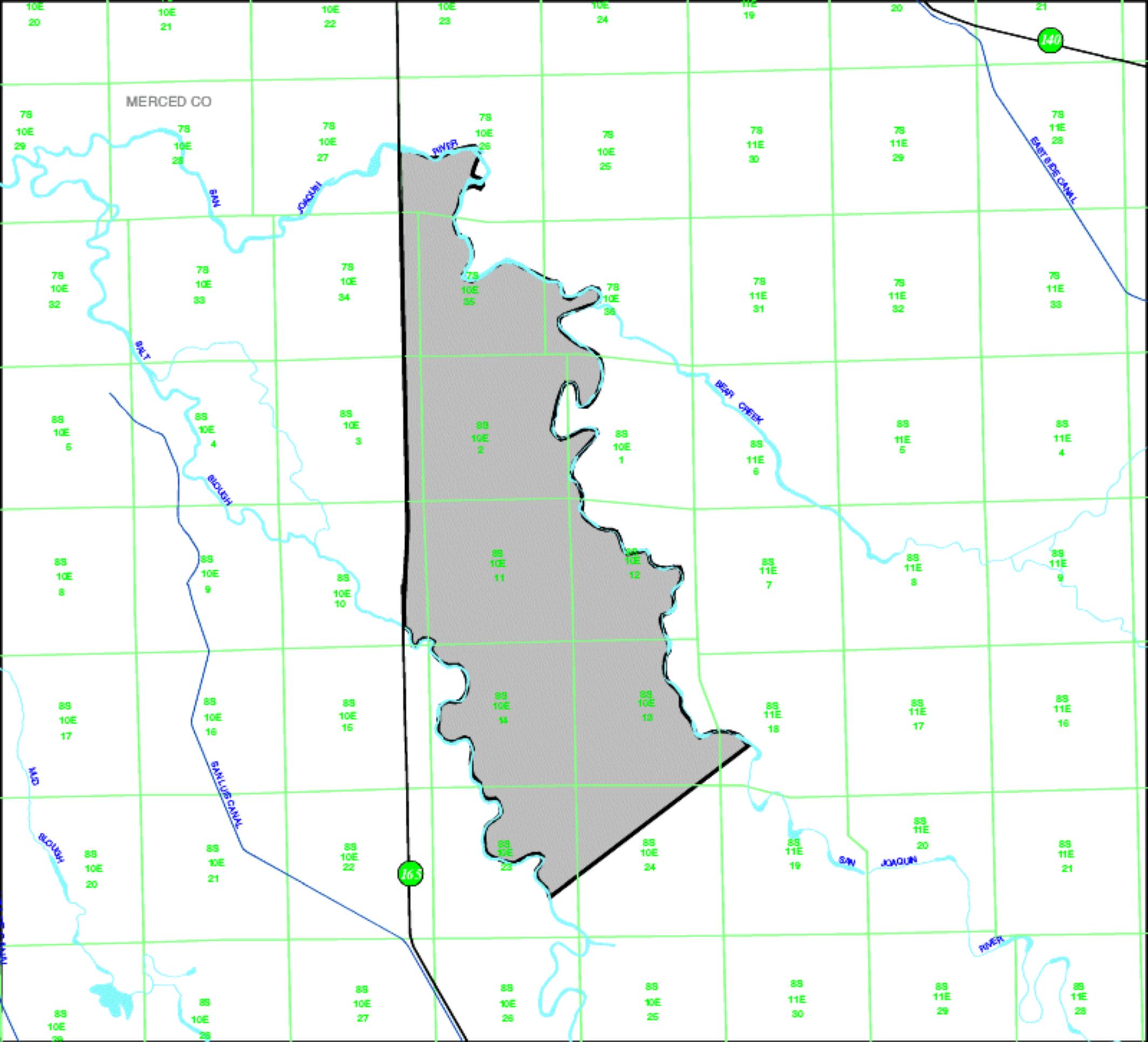
**Kesterson Unit
San Luis NWR**



- Major Roads
- - - County
- Public Land Survey System
- Refuge



**Exhibit No.
A-2**



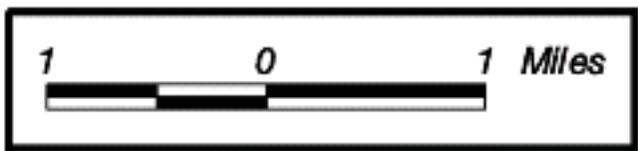
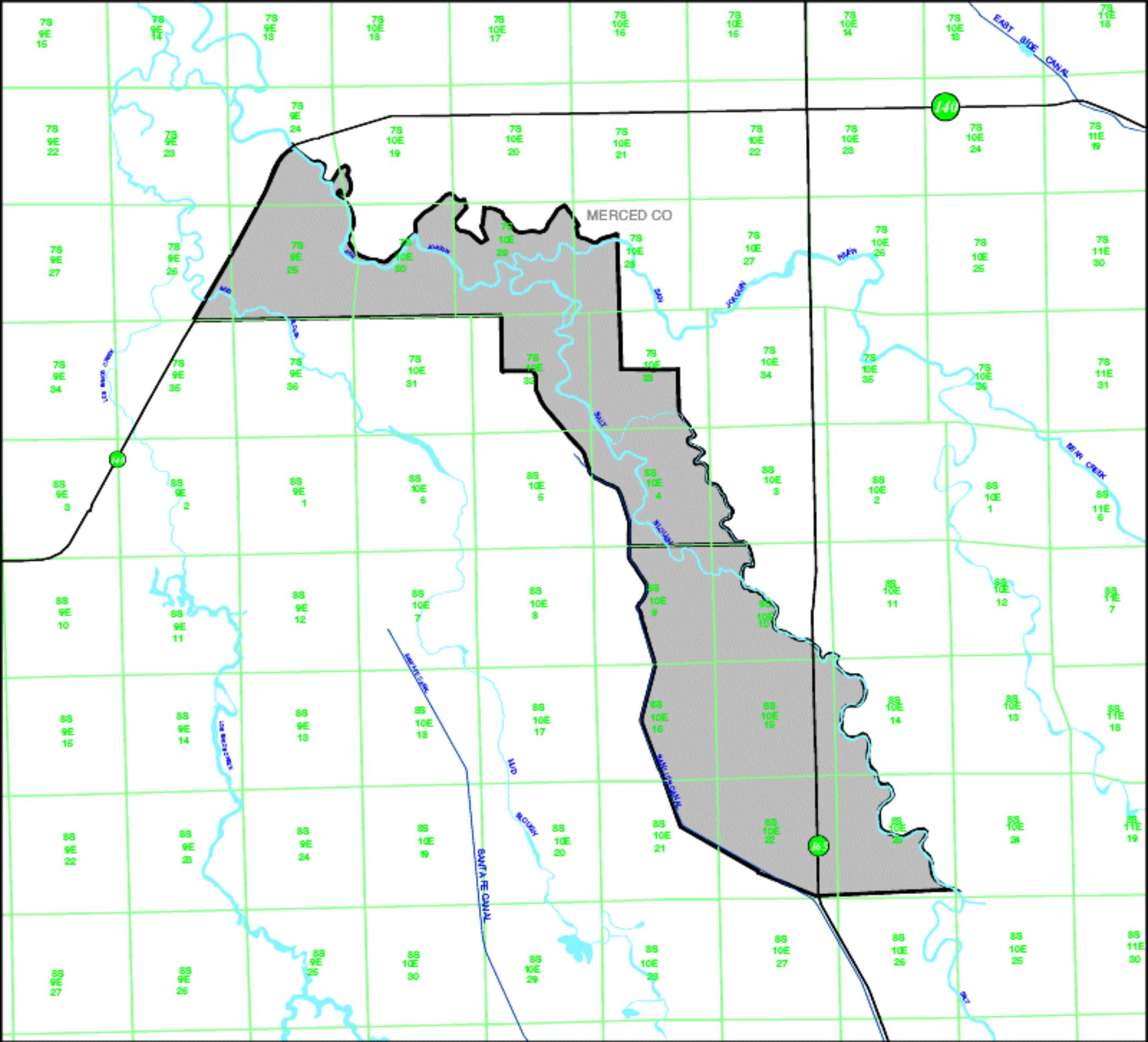
**West Bear Creek Unit
San Luis NWR**



- Major Roads
- - - County
- Public Land Survey System
- Refuge



**Exhibit No.
A-3**



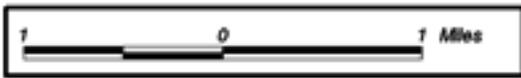
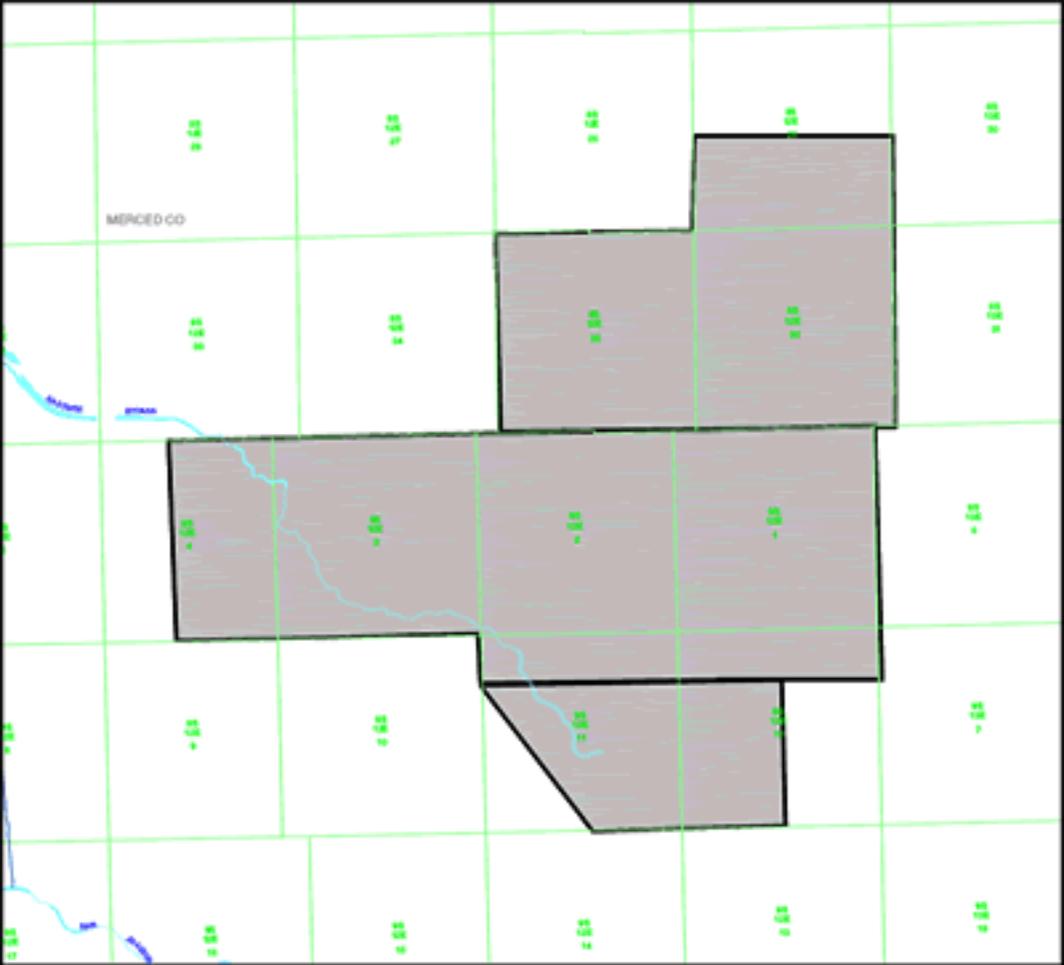
**Freitas Unit
San Luis NWR**



- Major Roads
- - - County
- Public Land Survey System
- Refuge



**Exhibit No.
A-4**



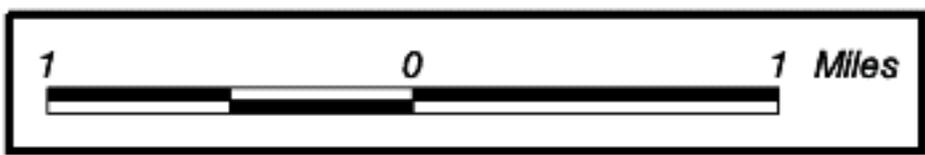
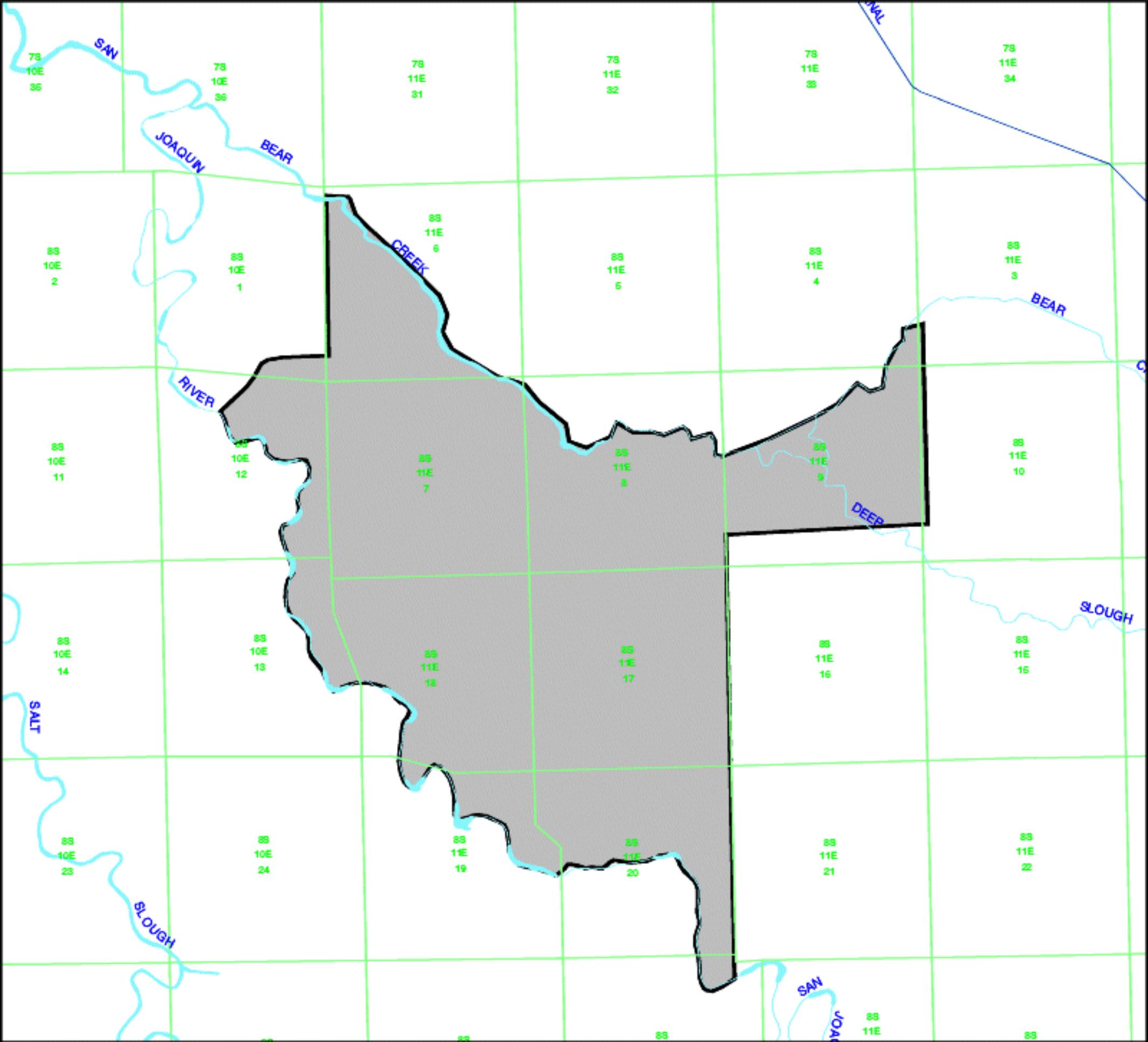
**Merced Unit
Merced NWR**



-  Major Roads
-  County
-  Public Land Survey System
-  Refuge



**Exhibit No.
A-5**



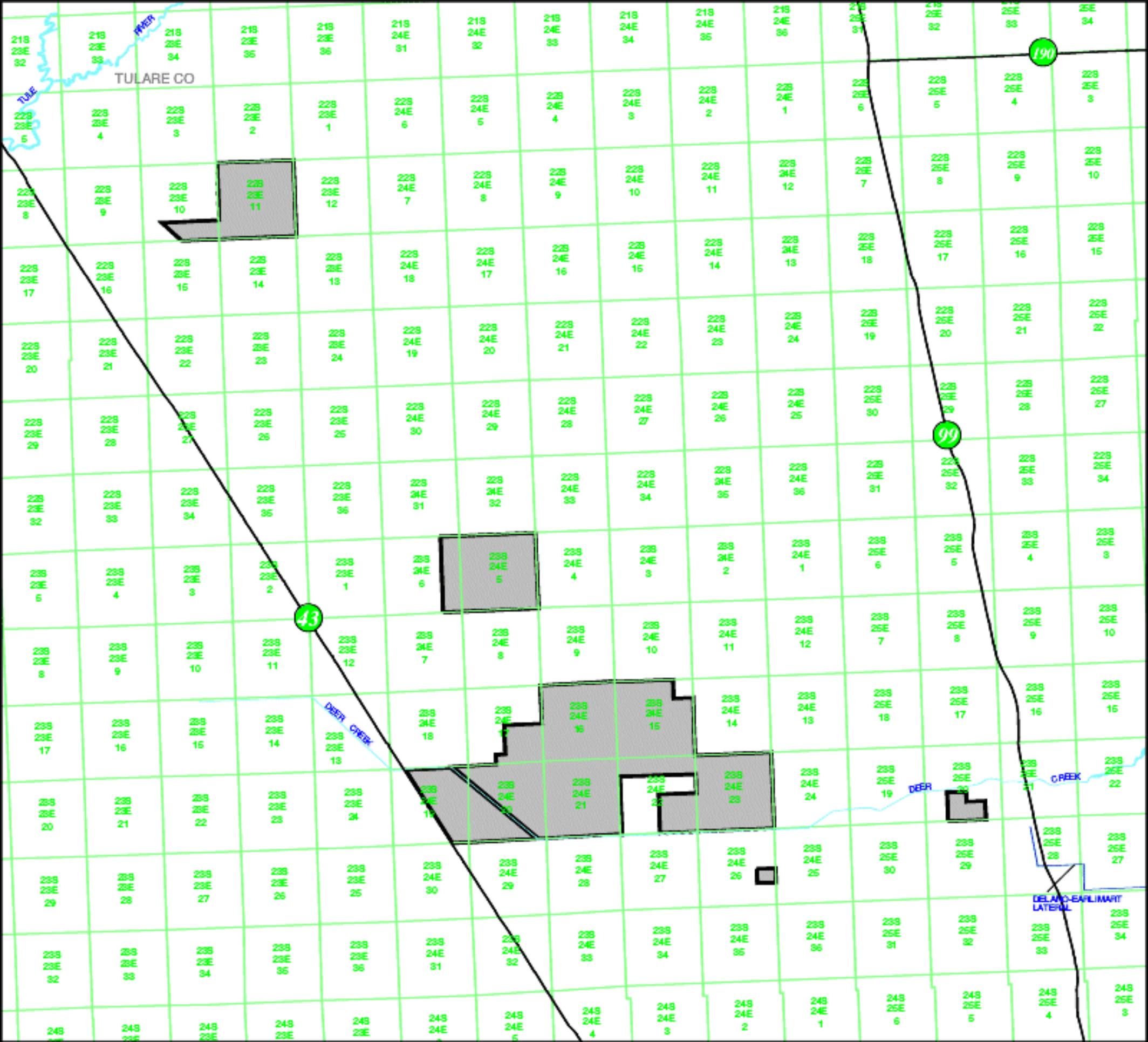
**East Bear Creek Unit
Merced NWR**



- Major Roads
- - - County
- Public Land Survey System
- Refuge



**Exhibit No.
A-6**



Pixley NWR



- Major Roads
- - - County
- Public Land Survey System
- Refuge



Exhibit No. A-8

EXHIBIT B

National Wildlife Refuge							
Note: Quantities shown below are acre-feet of water							
Refuge	Level 2 ¹ Water Supplies	Source of Level 2 Water Supplies		Incremental Level 4 ² Water Supplies	Sources of Incremental Level 4 Water Supply		Total Level 4 ³ Supplies
		MOU	Non-Project		MOU	Replacement	
San Joaquin Valley							
San Luis Unit	13,350	19,000 ⁷	0	5,650	0	5,650 ⁸	19,000
Kesterson	3,500	10,000 ⁷	0	6,500	0	6,500 ⁸	10,000
West Bear Creek	7,207	7,207	0	3,603	3,603 ⁴	0	10,810
Freitas	3,527	5,290 ⁷	0	1,763	0	1,763 ⁸	5,290
Merced	13,500	0	15,000 ⁵	2,500	1,000 ⁴	0	16,000
East Bear Creek	8,863 ⁶	8,863	0	4,432 ⁶	4,432 ⁴	0	13,295
Tulare Lake Basin							
Kern	9,950	9,950	0	15,050	15,050 ⁴	0	25,000
Pixley	1,280	1,280	0	4,720	4,720 ⁴	0	6,000
Total	61,177	61,590	15,000⁵	44,218	28,805⁴	13,913⁸	105,395
¹ Quantity as defined in Article 1(i) of this Contract							
² Quantity as defined in Article 1(h) of this Contract							
³ Quantity as defined in Article 1(j) of this Contract							
⁴ To be acquired in accordance with Article 3(a) of this Contract							
⁵ Mitigation water from Merced Irrigation District per FERC Licensing requirement							
⁶ Reduced quantities according to the updated San Joaquin Basin Action Plan, 1995							
⁷ Provided prior to CVPIA							
⁸ Provided prior to CVPIA - To be replaced to the Project when available and acquired from willing sources - The California Department of Fish and Game's agreement to the inclusion of this figure in this Exhibit is not intended to and should not be construed as constituting an agreement by the State of California to share the costs of acquiring this quantity of water.							
Final 01/18/01							