

AGREEMENT  
AMONG  
THE UNITED STATES OF AMERICA  
AND  
THE OAKDALE IRRIGATION DISTRICT  
AND  
THE SOUTH SAN JOAQUIN IRRIGATION DISTRICT  
FOR THE  
OPERATION OF NEW MELONES DAM AND RESERVOIR  
AND TULLOCH DAM AND RESERVOIR

Agreement No.  
8-07-20-W0714

THIS AGREEMENT, made this 30<sup>th</sup> day of August, 1988,  
between the UNITED STATES OF AMERICA acting by and through the Bureau of  
Reclamation, Department of the Interior represented by the Contracting  
Officer executing this Agreement, hereinafter referred to as the United  
States, and the OAKDALE IRRIGATION DISTRICT and the SOUTH SAN JOAQUIN  
IRRIGATION DISTRICT hereinafter referred to as the Districts,

WITNESSETH THAT:

EXPLANATORY RECITALS

WHEREAS, the United States Corps of Engineers has constructed and  
the Secretary of the Interior is operating the New Melones Project on the  
Stanislaus River, California; and

WHEREAS, the Districts obtained License No. 2067 from the Federal  
Power Commission (now the Federal Energy Regulatory Commission) for the  
Tulloch Power Project. Article 29 of that License requires the Districts  
to enter into an agreement with the United States, satisfactory to the  
Commission, whereby the United States, will be permitted to use Tulloch Dam  
and Reservoir, referred to in License No. 2067 as Tulloch Power Project,  
for necessary afterbay reregulation of water releases through the New  
Melones Powerplant; and

WHEREAS, this Agreement does not address the issue of payment of  
compensation by the United States to the Districts for the United States  
use of the Tulloch Dam and Reservoir as an afterbay, because the parties  
recognize that Article 31 of License No. 2067 provides that the Federal  
Energy Regulatory Commission reserves the right to determine such  
compensation, if any; and

WHEREAS, this Agreement does not address the issue of whether the  
Districts should be required to pay to the United States any headwater  
benefits charge for the Tulloch Power Project, nor does it set forth the  
manner in which such charge, if any, should be computed, because the  
parties recognize that the Federal Energy Regulatory Commission is the  
federal agency empowered to compute and require the payment of such a  
charge; and

WHEREAS. The United States entered into an Agreement and Stipulation with the Districts, dated October 24, 1972, hereinafter referred to as the 1972 Agreement, superseded by a new Agreement and Stipulation dated August 30, 1988, hereinafter referred to as the 1988 Agreement, a copy of which is and attached hereto as Exhibit A. which recognizes the water rights of the Districts on the Stanislaus River:

WHEREAS. it is in the best interest of the United States and the Districts to operate New Melones Dam, Tulloch Dam, Goodwin Dam, and their respective reservoirs and power facilities in accordance with the terms and conditions set forth below.

NOW, THEREFORE. IT IS AGREED:

#### DEFINITIONS

1. When used herein:

- (a) The term "New Melones Project" shall mean the Federal reclamation project including the New Melones Dam, Reservoir and appurtenant facilities on the Stanislaus River constructed by the United States and operated as the New Melones Unit of the Central Valley Project in accordance with the Flood Control Act of December 22, 1944, 58 Stat. 887, P.L. 78-534, as modified by Section 203 of the Flood Control Act of October 23, 1962, 76 Stat. 1191, P.L. 87-874;
- (b) The term "Tri Dam Project" shall mean Donnell's, Beardsley, Goodwin, and Tulloch Dams and their respective reservoirs with associated powerplants and appurtenant facilities;
- (c) The term "Goodwin Diversion Dam" shall mean the Districts' dam about 1 and 3/4 miles downstream from Tulloch Dam.
- (d) The term "Project Water" shall mean water appropriated by the United States for direct diversion or for storage behind and rediversion from New Melones Dam and Reservoir;
- (e) The term "Districts' conserved water" shall mean water stored in New Melones Reservoir and available to the Districts in accordance with Article 4 of the 1988 Agreement;
- (f) The term "water year" shall mean October 1 of each calendar year through September 30 of the following year; and
- (g) The term "Secretary" or "Contracting Officer" shall mean the Secretary of the Interior or his duly authorized representative.

TERM, REVIEW, AND MODIFICATION

2. (a) The parties intend to review this Operation Agreement periodically. Either the United States or the Districts may at any time request modification of a specific provision or provisions of this Agreement.
- (b) Upon such a request, the parties shall, within 90 days, negotiate a modification of the disputed issue or issues. Should the parties be unable, within such period, to agree upon such a modification, each party reserves all rights and remedies available to it for a resolution of the disputed issue.
- (c) Upon the lapse of the 90-day negotiation period, either party may initiate a dispute resolution proceeding concerning the disputed provision, in which event:
  - (i) The disputed provision shall cease to be in effect (unless the parties otherwise agree),
  - (ii) All remaining terms and provisions of this Agreement shall remain in effect.

OPERATION OF NEW MELONES DAM AND RESERVOIR  
TO SATISFY AGREEMENT AND STIPULATION  
BETWEEN UNITED STATES AND DISTRICTS

3. The United States and the Districts shall comply with the 1988 Agreement and any amendments thereto.

OPERATION OF TULLOCH DAM AND RESERVOIR

4. (a) Tulloch Dam and Reservoir shall be operated by the Districts as an afterbay for the New Melones Project. The Districts shall make releases from Tulloch Reservoir for New Melones Project requirements in accordance with United States instructions. The Districts may also make releases from Tulloch Reservoir to utilize the quantities of water to which the Districts are entitled under the terms of the 1988 Agreement. The United States shall endeavor to operate the New Melones Project to maintain the Tulloch reservoir water surface elevation at or above 301.6 feet m.s.l. from March 20 to November 1 of each year unless otherwise required for maintenance or emergencies. Tulloch Reservoir water surface shall not be reduced below elevation 495.0 feet m.s.l. for maintenance of New Melones Dam and Reservoir without prior agreement between the parties. Further, it is recognized that power operation of the New Melones Project may subject Tulloch Reservoir to daily fluctuations in water surface elevations.

- (b) The Districts shall operate Tulloch Dam and Reservoir for flood control purposes in accordance with directions from the United States Bureau of Reclamation to permit the United States Bureau of Reclamation to comply with the United States Corps of Engineers' Reservoir flood control criteria <sup>1</sup> unless the Districts determine that a variation is necessary to protect the safety of Tulloch Dam, Goodwin Dam, their respective reservoirs, their respective appurtenances, or any of them, or to avoid serious hazards. Any variation shall be reported by the Districts by the fastest means available to the Central Valley Operations Control Center and the Districts shall transmit written confirmation of such variance to the Corps of Engineers within 48 hours. The United States shall consult with the Districts to optimize power production at Tulloch Dam and Reservoir during flood control operations.

#### MONITORING

5. (a) The quantity of water stored in New Melones Reservoir shall be computed by the United States at midnight of each calendar day based upon the water surface elevation of the Reservoir and the United States Corps of Engineers' area capacity tables dated October 1978, or any subsequent revisions thereof.
- (b) Daily inflow to New Melones Reservoir shall be the sum of:
- (i) the daily change in storage in New Melones Reservoir;
  - (ii) the daily releases and diversions from New Melones Reservoir; and
  - (iii) the daily evaporation loss from New Melones Reservoir utilizing the most currently accepted means of accurately measuring evaporation.

Precipitation on the Reservoir surface is accounted for in storage and shall not be considered separate from the daily inflow.

- (c) The quantity of water stored in Tulloch Reservoir shall be computed by the Districts at midnight of each calendar day based on the water surface elevation of Tulloch Reservoir and area capacity tables prepared by the Districts.

<sup>1</sup> "New Melones dam and Lake, Stanislaus River, California. Report on Reservoir Regulation for Flood Control, Appendix V. to Master Manual of Reservoir Regulation, San Joaquin River Basin, California," dated January, 1980, along with any subsequent revisions.

- (d) The Districts shall measure and maintain records of the releases and spills from Tulloch Dam and Reservoir. diversions to the Districts, releases and spills to the Stanislaus River at Goodwin Dam, and diversion to others at Goodwin Dam.
- (e) Water measurement devices utilized by the Districts and the United States shall be operated and maintained to tolerances of accuracy agreed upon by the United States and the Districts. The parties shall examine, test and service their respective devices regularly to assure their accuracy. Either party may inspect the measuring devices installed, operated and maintained by the other party at any reasonable time. The party operating those devices shall promptly correct any deficiencies in those devices noted during such inspections.

EXCHANGE OF OPERATIONAL DATA

- 6. (a) On a daily basis, the United States shall provide the Districts with operational data regarding New Melones Dam and Reservoir and Project water requirements and the Districts shall provide the United States with operational data regarding Tulloch and Goodwin Dams and Reservoirs. The operational data shall include, as a minimum, reservoir storage, computed inflow, total releases from the facility, and changes in storage.
- (b) Beginning with February of each year, after the Bureau has provided its preliminary forecast of inflow in accordance with paragraph 4 of the 1988 Agreement, the Districts shall provide the United States with a forecast of diversions for the irrigation season. Said forecast shall be updated by the end of each month during the irrigation season. Diversion forecasts shall include estimated monthly diversions to the Districts' canals from Goodwin Dam.
- (c) On or before December 31 of each year, the parties shall exchange, in writing, schedules of the maintenance and replacement work which the parties intend to perform on their respective facilities during the following calendar year, and which would affect the other party or parties. The parties shall notify each other of any proposed revision in these schedules.
- (d) The United States and the Districts shall operate and maintain the telemetry equipment purchased and installed in accordance with Contract No. 2-07-20-x0242, as amended, a copy of which is attached hereto as Exhibit B.

INCREASED OPERATING COSTS

7. (a) The United States shall reimburse the Districts for any reasonable increased costs incurred by them subsequent to November 20, 1979 resulting from the operation of Tulloch Reservoir as an afterbay for the New Melones Project and/or Goodwin Dam for regulation and diversion of Project Water. The costs incurred by the Districts as a result of the of diversion of any Project Water from Goodwin Reservoir shall be addressed in a separate agreement between the Districts and the user of the Project Water.
- (b) Within 60 days after the signing of this Agreement, the Districts shall submit to the Contracting Officer, in such detail as he/she shall reasonably require, a statement of such costs incurred by the Districts due to operation of New Melones Dam and Reservoir through September 30, 1987.
- (c) Within 60 days after the signing of this Agreement, the Districts shall submit to the Contracting Officer, in such detail as he/she shall reasonably require, an estimate of such costs, if any, anticipated to be incurred by the Districts beginning October 1, 1988 through the next three succeeding water years: including the Districts' share of the anticipated costs of operating the telemetry equipment used jointly by the United States and the District. On or before March 1 of each water year thereafter, the Districts shall submit to the Contracting Officer a similar estimate of such costs for the three succeeding water years. These estimates shall be based on operating plans submitted by the United States to the Districts by February 1 of each year.
- (d) On or before December 31, following the signing of this Agreement, and on or before each succeeding December 31, the Districts shall submit to the Contracting Officer in such detail as he/she may require, a statement of such costs actually incurred by the Districts, if any, during the preceding water year.
- (e) The Contracting Officer shall reasonably review and approve the payment of such costs.
- (f) The United States shall, within 90 days of receipt of the statements described in Subarticles 7(b) and 7(d) above, subject to the appropriation of funds, reimburse the Districts for such costs, which are approved by the Contracting Officer. All such costs to the Districts approved by the Contracting Officer, which are in excess of appropriated funds shall be included in the statements described in Subarticles 7(b) and 7 (d) submitted for the succeeding years' expenses:

Provided, That the parties reserve all their respective rights, remedies and defenses with regard to the disapproval by the United States of any such costs remaining unpaid and the timeliness of the United States payments of such costs.

#### RECORDS

8. The parties hereto shall maintain adequate and appropriate operational records for their facilities, such records to be subject at reasonable times for inspection by authorized representatives of either party.

#### UNCONTROLLABLE FORCE - HOLD HARMLESS

9. No party shall be considered to be in default of any obligation assumed hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, including drought, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, and restraint by court of public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch. This paragraph shall not be applicable to the 1988 Agreement.

#### Additional Tulloch/Goodwin Hydroelectric Facilities

10. This Agreement is entered into in light of the following facts:
  - (a) The reauthorization of the New Melones Project in Section 203 of the Flood Control Act of 1962 (P.L. 87-874, 76 Stat. 1173) did not include authorization for construction by the United States of powerplants at Tulloch or Goodwin Dams and the United States does not object, at this time, to such construction by the Districts.
  - (b) The Districts have invested substantial monies in the development of the necessary permits and plans for development and installation of:
    - (i) power generation facilities utilizing the power head at Goodwin Reservoir; and
    - (ii) additional generating capacity at Tulloch Reservoir to provide for the passage of additional water through the power generation facilities in lieu of spilling water over Tulloch spillway.

- (c) At such time as the Districts have finalized their plans for such facilities, they shall submit those plans to the United States to provide for the coordinated use and operation of the facilities described in Paragraph 10(b) with the New Melones Project. Any terms of this Agreement required to be modified and/or new terms added as a result, shall be incorporated herein by mutual consent.

OFFICIALS NOT TO BENEFIT

11. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

12. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

13. The expenditure or advance of any money or the performance of any work by the Districts hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Districts from any obligation under this Agreement. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

NOTICES

14. Unless specifically otherwise provided for in this Agreement, any notice, demand, or request authorized or required by this Agreement, excepting operational communications, shall be deemed to have been given, on behalf of the Districts, when mailed, postage prepaid, or delivered to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the following:



Tri Dam Project  
Star Route 1303  
Sonora, CA 95370

Oakdale Irrigation District  
Post Office Box 188  
Oakdale, California 95361

South San Joaquin Irrigation District  
11011 East Highway 120  
Manteca, CA 95336

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first hereinabove written.

THE UNITED STATES OF AMERICA

By *Neil M. Steward*  
Acting Regional Director, Mid-Pacific Region  
Bureau of Reclamation

OAKDALE IRRIGATION DISTRICT

Attest:

By *W. J. Ruckman*  
President

*Eugene O. Bergeron*  
Secretary

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

Attest:

By *B. J. Schup*  
President

*Barrett Hill*  
Secretary

Actions taken by the South San Joaquin Irrigation District Board of Directors at their Board Meeting on August 30, 1988.

Motion by Director Van Groningen, seconded by Director DeGroot that South San Joaquin Irrigation District enter into Agreement No. 8-07-20-W0714, an "AGREEMENT AMONG THE UNITED STATES OF AMERICA AND THE OAKDALE IRRIGATION DISTRICT AND THE SOUTH SAN JOAQUIN IRRIGATION DISTRICT FOR THE OPERATION OF NEW MELONES DAM AND RESERVOIR AND TULLOCH DAM AND RESERVOIR"

Adopted on this 30th day of August, 1988 by the following roll call vote:

Ayes: DeGroot Schulz Van Groningen

Noes: Cardoza Rothlin

Motion by Director DeGroot, seconded by Director Van Groningen that South San Joaquin Irrigation District enter into the "1988 AGREEMENT AND STIPULATION" with the United States of America, by and through the United States Department of the Interior, Bureau of Reclamation, Mid-Pacific Region, and the Oakdale Irrigation District and the South San Joaquin Irrigation District.

Adopted on this 30th day of August, 1988 by the following roll call vote:

Ayes: DeGroot Schulz Van Groningen

Noes: Cardoza Rothlin

Motion by Director DeGroot, seconded by Director Van Groningen it was resolved that the President and the Secretary be authorized and directed to execute on behalf of the District the 1988 Agreement and Stipulation and the Operations Agreement, designated USBR No. 8-07-20-W0714.

Adopted on this 30 day by the unanimous vote of the Board of Directors:

#### CERTIFICATION

I, Barrett Kehl, Secretary to the Board of Directors of South San Joaquin Irrigation District hereby certify the attached to be a full, true, and correct copy of the record of the action taken by said Board of Directors, by vote of the members present at its meeting August 30, 1988 as the same appears in the official minutes of said Board, and that said Board action is still in full force and effect.

Dated: 8.30.88

Barrett Kehl  
Barrett Kehl, Secretary