Agreement No. 10-WC-20-3975

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

and

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
Los Banos, California

AGREEMENT FOR CONTINUED USE OF THE SAN LUIS DRAIN

FOR THE PERIOD
JANUARY 1, 2010 THROUGH DECEMBER 31, 2019

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

AGREEMENT FOR CONTINUED USE OF THE SAN LUIS DRAIN

THIS AGREEMENT is entered into this 22 day of December, 2009, in accordance with the Act of Congress approved June 17, 1902 (32 Stat. 388) and all Acts amendatory thereof and supplemental thereto, all such Acts commonly known as and referred to as the Federal Reclamation Law, by the United States of America (UNITED STATES), acting by and through its Bureau of Reclamation, Mid-Pacific Region (RECLAMATION), Department of the Interior, represented by the officer executing this Agreement, and the San Luis & Delta-Mendota Water Authority (AUTHORITY), a joint powers Authority, duly organized, existing and acting pursuant to the laws of the State of California, acting by and through its Executive Director.

RECITALS

A. The UNITED STATES has acquired land and constructed the San Luis Drain as a feature of its Central Valley Project.

B. The AUTHORITY has requested that the UNITED STATES permit it to continue using a portion of the San Luis Drain (as hereinafter defined and hereinafter referred to as the "Drain") for the discharge and transportation of a maximum flow of 150 cubic feet per second ("CFS") of drainage water to Mud Slough.

C. The AUTHORITY and RECLAMATION have evaluated potential environmental consequences of the proposed continued use of the Drain to convey drainage water, as set forth in this Agreement, and have completed the necessary environmental reviews in accordance with the AUTHORITY'S responsibilities under the California Environmental Quality Act ("CEQA") and RECLAMATION's responsibilities under the National Environmental Policy Act ("NEPA"). On the basis of their environmental reviews of the proposed action, the AUTHORITY issued an Environmental Impact Report ("EIR") and Notice of Determination ("NOD"), filed on

October 12, 2009, and RECLAMATION issued an Environmental Impact Statement ("EIS") and Record of Decision ("ROD") on December 21, 2009.

D. It is the intention and objective of RECLAMATION and the AUTHORITY, among other things, to ensure that continued use of the Drain as provided in this Agreement results in improvement in water quality and environmental conditions in the San Joaquin River, delta, and estuary relative to the quality that existed prior to the term of this Agreement, insofar as such quality or conditions may be affected by drainage discharges from the Drainage Area (as hereinafter defined), and to ensure that such continued use of the Drain does not reduce the ability to meet the salinity standard at Vernalis compared to the ability to meet the salinity standard that existed prior to the term of this Agreement.

E. It is also the intention and objective of RECLAMATION and the AUTHORITY, among other things, to pursue planning for a report to the Oversight Committee by the end of Year Four (2013) on measures to meet loads in Years Six through Ten (2015-2019) in order to meet water quality objectives in Mud Slough by the compliance date fixed in the Regional Board's Basin Plan (as hereinafter defined and as said compliance date may be amended in relation to this Agreement. These efforts will be coordinated with the California Department of Fish and Game and the United States Fish and Wildlife Service to accommodate their activities relating to endangered and non-endangered species in or adjacent to Mud Slough.

F. The Draining Parties have developed a long-term drainage management plan, termed the "Westside Regional Drainage Plan," designed to provide long-term drainage service to lands in the Grassland Drainage Area. Continued drainage discharge under the Use Agreement is a component of the Westside Regional Drainage Plan. After the term of the Use Agreement, the Westside Regional Drainage Plan is designed to manage drain water produced from irrigation in the Grassland Drainage Area without the need for discharge of such drainage to the San Joaquin River.

G. Even with full implementation of the Westside Regional Drainage Plan, the Draining Parties expect that high rainfall events occasionally will create drainage flows that cannot be controlled by the Draining Parties, and it is the intention and objective of the AUTHORITY in coordination with RECLAMATION to develop, beginning no later than Year Seven (2016), a long-term storm water management program. Development of such program may include the evaluation of utilizing a portion of the San Luis Drain to bypass storm water flows around some wetland areas, in order to minimize the impact of such flows.

H. The AUTHORITY has entered into an agreement with its members, known as the Grassland Basin Drainage Management Activity Agreement, and into memoranda of understanding with certain other parties described in section I.D. (collectively, the "Activity Agreement"), all of which have a need for continued use of the San Luis Drain. RECLAMATION has no objection to the AUTHORITY entering into such agreements.

I. The UNITED STATES has no objection to continued use of the Drain as described in this Agreement and RECLAMATION land as such continued use is, at this time, not incompatible with the purpose of the Drain and the purpose for which the RECLAMATION land was withdrawn or acquired and is being administered by the UNITED STATES.

J. The AUTHORITY has entered into Contract No. 8-07-20-X0354 (the "Transfer Agreement"), with RECLAMATION, whereby the AUTHORITY is responsible for, among other things, the operation and maintenance of the San Luis Drain to the extent described in the Transfer Agreement and according to the terms set forth therein; the scope of AUTHORITY's responsibility for operation and maintenance of the San Luis Drain and of its authority delegated by RECLAMATION will be as set forth in the Transfer Agreement, except that the terms of this Agreement providing any more specific responsibilities and authority supersede the Transfer Agreement for that portion of the Drain subject to this Agreement.

K. RECLAMATION anticipates that any long-term use of the Drain beyond the term of this Agreement will be for a program for discharging storm water only. Any such stormwater discharge program will require further specific planning and compliance with all environmental laws, including the National Environmental Policy Act and the Endangered Species Act. Terms of this Agreement have been negotiated by a group of agricultural and environmental stakeholders, and contains three distinct mechanisms to provide incentives to implement an in-valley drainage management solution as soon as possible, such that (i) Load Values decrease over the term of this Agreement;(ii) Incentive Fees increase over the term of this Agreement and (iii) mitigation obligations increase over the term of this Agreement, with significant changes applying during Years Six through Ten (2015-2019) in particular; however, such mechanisms do not constitute a model, or form the baseline of requirements for any long-term storm water discharge program, which will be required to meet regulatory requirements for such programs.

L. This Agreement is the successor to and supersedes the 2001 Use Agreement between RECLAMATION and the AUTHORITY (as hereinafter defined), which earlier agreement was based in part on that certain Final Environmental Impact Statement and Environmental Impact Report dated May 25, 2001 ("EIS-EIR"), the AUTHORITY's Notice of Determination ("NOD") filed on August 14, 2001, and RECLAMATION's Record of Decision ("ROD") dated September 28, 2001.

M. The parties expect to obtain Waste Discharge Requirements from the Regional Board for discharges under the Use Agreement. Provisions of the Use Agreement are not intended to predetermine provisions included in WDR's.

AGREEMENT

Subject to the following terms, conditions, and limitations, the UNITED STATES grants permission to the AUTHORITY to continue to enter upon, use, operate and maintain the Drain,

including check structures and all other land and facilities appurtenant to the Drain for the purpose of conveying drainwater flows from the Drainage Area, from Milepost 105.72, Check 19 to the terminus and into Mud Slough. In addition, RECLAMATION grants permission to use Drain rights-of-way from the terminus (Kesterson Reservoir) to Check 19, as reasonably required in accordance with this Agreement. "Land" includes land owned and/or controlled by the United States and land in which the United States holds an interest that is affected by the AUTHORITY's activities under this Agreement.

I. DEFINITIONS AND REFERENCED TERMS

For purposes of this Agreement:

A. "Attributable Discharge" means the amount of selenium load or salt load, whichever is applicable, discharged from the Drain, plus any storm event discharges to the Grassland Water District from the Drainage Area, minus any amount exempted pursuant to the high rainfall exemption as specified in Appendix F (attached hereto and incorporated herein), and minus any amount exempted pursuant to the upper watershed exemption as specified in Appendix G (attached hereto and incorporated herein).

B. "Drainage Area" means those lands identified in Appendix A (attached hereto and incorporated herein) within the geographic area shown on Appendix B which are within the boundaries of districts identified as "Draining Parties" or whose owners have become Draining Parties.

C. "Drainage Oversight Committee" or "Oversight Committee" means the Oversight Committee formed pursuant to the First Use Agreement that is composed of agency managers from RECLAMATION, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, California Department of Fish and Game, and the Regional Water Quality Control Board, and which continues to exercise the functions described in this Agreement.

D. "Draining Parties" means the AUTHORITY member agencies which have entered into, and are currently participating in, the Grassland Basin Drainage Management Activity Agreement with the AUTHORITY and with the parties to various Memoranda of Understanding ("MOU's") by the terms of which the parties who would discharge into the Drain have agreed to abide by the terms of this Agreement. Members of the AUTHORITY which have entered into the Grassland Basin Drainage Management Activity Agreement include the Broadview Water District, the Firebaugh Canal Water District, the Pacheco Water District, the Panoche Drainage District, the Charleston Drainage District and the Widren Water District, the parties to that certain MOU with the AUTHORITY referred to as the Camp 13 Drainers (now Camp 13 Drainage District), and any other parties which may enter into MOU's with the AUTHORITY including the owners of certain additional lands, described in Appendix A hereto, from which lands drainage waters historically entered channels utilized to provide water to wetland habitat in the Grassland Water District and state and federal refuges.

E. "First Use Agreement" means that certain agreement for use of the San Luis Drain Between the United States, Department of the Interior, Bureau of Reclamation and the San Luis & Delta Mendota Water AUTHORITY entered into November 3, 1995, Agreement No. 6-07-20-W1319 and any amendments thereto, including Amendment to the Use Agreement for Use of the San Luis Drain dated September 30, 1998 and, Second Amendment to the Agreement for Use of the San Luis Drain dated December 30, 1998.

F. "2001 Use Agreement" means that certain agreement for use of the San Luis Drain between the United States, Department of the Interior, Bureau of Reclamation and the San Luis & Delta Mendota Water AUTHORITY entered into on September 28, 2001, Agreement No. 6-07- 20-W2075 and any amendments thereto, including Modification No. 1 to said Agreement, dated June 8, 2007.

G. "Regional Board Basin Plan" means the Regional Water Quality Control Board's Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, as amended.

H. "Regional Water Quality Control Board" or "Regional Board" means the Region 5 California Regional Water Quality Control Board, Central Valley Region.

I. "Salinity" or "salinity" means the content of dissolved mineral salts, measured by determining the amount of total dissolved solids or by measuring the electrical conductivity and through appropriate conversion factors estimating the total dissolved solids.

J. "Salts" or "salts" means the products, other than water, of the reaction of an acid with a base; such products found in soils, when dissolved in water, break up into cations (e.g., sodium, calcium) and anions (e.g., chloride, sulfate).

K. "Salt Load" or "salt load" means the total mass of salts in a given volume of water entering or leaving an area.

L. "San Luis Drain" or the "Drain" mean the drain owned by the United States and consisting of approximately 28 miles from the terminus (Kesterson Reservoir) to Milepost 105.72, Check 19 (near Russell Avenue).

M. "Selenium" or "selenium" means the metalloid element, assigned atomic number 34, in all of its chemical forms, including but not limited to selenate, selenite, selenomethionine and elemental selenium. An essential nutrient in low concentrations, it bioaccumulates in the food web and can have significant adverse effects on sensitive predators.

N. "Selenium Load" means the total mass of selenium in a given volume of water entering or leaving an area.

O. "Total Dissolved Solids" or "TDS" shall mean the non-filterable portion of the material residue remaining after a liquid sample is evaporated.

P. "TMDL" means the Total Maximum Daily Load. For purposes of this Use Agreement, "Selenium TMDL" shall mean the TMDL for selenium on the lower San Joaquin River approved by the USEPA on March 28, 2002, or any subsequent TMDL for selenium on the lower San Joaquin River approved by the USEPA .

Q. "TMML" means the Total Maximum Monthly Load. For purposes of this Use Agreement, TMML values will be those calculated under the Selenium TMDL approved by the United States Environmental Protection Agency on March 28, 2002.

R. "Unacceptable Adverse Environmental Effects" shall be determined by RECLAMATION, based upon available data and science and after consultation with the Oversight Committee, after considering applicable federal and state laws (e.g. Migratory Bird Treaty Act, Endangered Species Act, Clean Water Act, Porter-Cologne Act), as well as the impacts in Mud Slough or at any point downstream of Mud Slough, including adjacent wetland and riparian areas.

S. "Unforeseeable and Uncontrollable Events" are events that cannot reasonably be anticipated and are caused by events outside the control of the Authority. Final determinations as to what constitutes Unforeseeable and Uncontrollable Events are made solely by the Oversight Committee.

T. "USEPA" means the United States Environmental Protection Agency.

U. "Waste Discharge Requirements" or "WDR" means the terms and conditions for discharges of drainage issued by the Regional Board pursuant to California law.

II. PURPOSE AND SCOPE OF USE

A. RECLAMATION and the AUTHORITY have entered into this Agreement to

1. continue the separation of unusable agricultural drainage water discharged from the Grassland Drainage Area from wetland water supply conveyance channels for the period 2010-2019; and,

2. facilitate drainage management that maintains the viability of agriculture in the project area and promotes continuous improvement in water quality in the San Joaquin River.

B. The lands to be served pursuant to this Agreement are only those lands located within the geographic area in Appendix A and shown in Appendix B (attached hereto and incorporated

herein), which consists of approximately 97,400 acres, together with additional lands not to exceed 1,100 acres whose owners choose to become Draining Parties.

C. The AUTHORITY shall be permitted to use the Drain for the discharge into and transportation of drainage water from the Draining Parties within the Drainage Area, in accordance with the terms and conditions of this Agreement.

D. The AUTHORITY may incorporate terms into the Activity Agreement or MOU's or may promulgate bylaws, rules or regulations thereunder concerning the sharing of responsibilities, costs and obligations arising from this Agreement and for the payment of fees as compensation to the AUTHORITY for its performance of its obligations and responsibilities under this Agreement, but in no event shall any such Activity Agreement or MOU entered into between the AUTHORITY and the Draining Parties include rights and responsibilities which are inconsistent with the specific terms and conditions of this Agreement, or which are in violation of any laws or regulations applicable to this Agreement.

III. PERMITS AND RESPONSIBILITIES

A. Permits and Approvals. The AUTHORITY shall be responsible for obtaining all permits and other approvals necessary for its continued use, operation and maintenance of the Drain in accordance with the terms and conditions of this Agreement, the Waste Discharge Requirements issued to Reclamation and to the AUTHORITY on behalf of Draining Parties by the Regional Board on September 7, 2001, as they have been or may be amended and any subsequent WDR issued in relation to this Agreement, or any alternative form of requirements of the Regional Board, and all applicable local, state and federal laws and regulations.

B. Discharges into and from Drain. The AUTHORITY shall be responsible for ensuring that only drainage water from the Drainage Area pursuant to the terms of the Activity Agreement or MOU enters the Drain, and that such drainage water is controlled and monitored to ensure that its quality and composition comply with this Agreement and all applicable federal, state and local standards, requirements, regulations and laws. During its use of the Drain under, this Agreement, the AUTHORITY shall be solely responsible for and have sole authority over the proper management and disposal of all discharges into and from the Drain, subject to this Agreement and all applicable laws and regulations.

C. Check 19. For purposes of this project the AUTHORITY shall not use the Drain in any manner that will affect water levels in or cause drainage water to flow into the portions of the Drain south of Check 19. Management and control of the operation of Check 19 shall be in accordance with the Transfer Agreement.

D. Silt Removed by RECLAMATION. RECLAMATION, in its discretion, shall, at any time during the term of this Agreement, have the option of either removing the sediment and organic materials now deposited in the Drain, or, of delegating this responsibility to the

AUTHORITY. If RECLAMATION elects to remove the sediment during the term of this Agreement, RECLAMATION shall endeavor to conduct and coordinate such activities in a manner which will not unreasonably interfere with the AUTHORITY's use of the Drain. In any event, unless directed otherwise by RECLAMATION, the AUTHORITY shall be responsible for the management, removal and disposal, at its own and sole expense, of all sediment, organic materials and other substances accumulating in the Drain as a result of its use of the Drain pursuant to the First Use Agreement, the 2001 Use Agreement, and this Agreement. Any costs incurred by either RECLAMATION or the AUTHORITY for the management, removal and disposal of the sediment and other materials in the Drain shall be apportioned between RECLAMATION and the AUTHORITY on the basis of the total volume of materials and the total concentration of contaminants in those materials in the Drain attributable to each party's use of the Drain.

E. [Reserved.]

F. Water Conservation Programs. All Draining Parties discharging into the Drain pursuant to this Agreement that are subject to Federal Reclamation law shall be implementing an effective water conservation and efficiency program based on that Draining Party's Water Management Plan that has been determined by RECLAMATION to meet the conservation and efficiency criteria for evaluating such plans established under Federal law.

G. Management Plans. The AUTHORITY shall prepare the following reports and develop the following plans:

1. By the end of Year Four (2013), a Report to the Oversight Committee provided at a noticed meeting regarding the Draining Parties' plan to meet loads in Years Six through Ten (2015-2019).

2. No later than Year Seven (2016), the Draining Parties shall begin developing a long-term storm water management plan, which may include evaluation of utilizing the San Luis Drain to bypass storm water flows around some wetland areas.

3. The Draining Parties, in coordination with Reclamation, shall develop a Sediment Management Plan consistent with this Agreement.

H. Environmental Commitments:

1. Operational Commitments. The AUTHORITY commits to the following:

(a) Spill Prevention. The structure in the San Luis Drain at Check 19 has been modified to prevent drainage waters from flowing southerly and to provide a mechanism to allow any groundwater that has seeped into the San Luis Drain south of Check 19 to be discharged downstream as necessary to prevent overtopping. The Drain will continue to be

operated and maintained to prevent drainage water from flowing south of Check 19 and to allow groundwater from south of Check 19 to spill into the Drain as necessary to prevent overtopping.

(b) Downstream Users Notification. The AUTHORITY will make flow and monitoring data available to downstream entities that have requested it. The AUTHORITY will provide advance notice to such parties of operations that may cause sudden changes in flow or quality and will develop procedures to coordinate with such parties on such operations. The AUTHORITY will work cooperatively with downstream entities regarding the timing of discharges and establish procedures that will ensure advance notice to, and coordination with, downstream diverters of upcoming releases.

(c) Regional Archeology. Any proposed construction areas will be evaluated and cleared by Reclamation's Regional Archeologist. If, during construction, subsurface or previously unidentified archeological resources are encountered, activities will immediately be halted and the Regional Archeologist notified. Appropriate clearance will be obtained prior to resumption of work.

(d) Protection of China Island. The AUTHORITY coordinated with the California Department of Fish and Game regarding the design and construction of retainer dikes or other measures to protect Fish and Game's China Island Wildlife Area and the immediately adjacent portion of the San Joaquin River from drainage water discharged from the Drainage Area. In addition, the AUTHORITY shall enter into a Memorandum of Agreement with the California Department of Fish and Game relating to use of Mud Slough (North) within the boundaries of the China Island Wildlife Area. Said MOA may be modified from time to time with the mutual consent of the parties thereto.

(e) Public Health Projections in Mud Slough. In the event RECLAMATION or the AUTHORITY receive notification from appropriate local, state or federal authorities that a potential public health risk exists in Mud Slough or the San Joaquin River associated with drainage from the Drainage Area, RECLAMATION and the AUTHORITY will notify resource management agencies in the affected area. RECLAMATION and the AUTHORITY will, in collaboration with such resource management agencies jointly develop and implement a program to protect public health that is acceptable to those agencies. All costs of developing and implementing said program to protect public health will be borne by the AUTHORITY.

(f) Sediment. Selenium already contained in sediments in the Drain is a source of concern because flows may suspend and transport sediments; selenium may migrate into the water column; and sediments may act as a sink, and selenium may concentrate into sediment. To avoid re-suspending sediment in the Drain, the maximum rate of flow in the Drain shall be 150 cfs. Under normal operations, flows will be slow enough to not cause sediment movement. Monitoring activities will detect any movements or selenium migration. In the event that selenium in sediments migrates into the water column, such selenium will be included in the

total annual load discharged by, and attributed to, the Authority. If monitoring results indicate that the Drain behaves like a sink, the measured loads will be used to estimate total selenium concentration within the sediments, and the information will be used to determine if the sediments must be removed from the Drain. Sediments will be removed well before composite concentrations indicate hazardous material values. The specific details of responses to monitoring results that indicate any of these scenarios exist will be presented in the Sediment Management Plan specified in III.G.3.

(g) Mitigation for Continued Use of Mud Slough. The specific commitments of the Draining Parties for mitigation arising from the continued use of Mud Slough and the anticipated extension of the compliance period before selenium water quality objectives are fully met in Mud Slough and the San Joaquin River between Mud Slough and the confluence of the Merced River are set forth in Appendix L to this Agreement, which describes the Draining Parties' obligation to pay Supplemental Mitigation fees during years Six through Ten of the Term, to be paid into a Supplemental Mitigation Fund and utilized to fund supplemental mitigation projects selected by the Oversight Committee from a list of projects identified by a subcommittee as described in Appendix C.

2. Load Reduction Assurances

(a) Selenium Load Values.

(1)The Selenium Load Values in Appendix C are hereby incorporated and made a part of this Agreement. These Values specify both annual and monthly Selenium Loads.

(2) If the agency with final regulatory approval changes the Water Quality Objective for selenium in the lower San Joaquin River or changes the TMDL for selenium in the lower San Joaquin River that was approved by USEPA on March 28, 2002, the provisions set forth in Appendix D shall apply.

(3) To determine if Selenium Load Values are being met, the Attributable Discharge of selenium will be compared to the Selenium Load Value for the time period under consideration. Selenium load will be measured at the terminus of the Drain (referred to as "Site B"), except that load discharged to the Grassland Water District from the Drainage Area during storm events will be measured at the discharge points into the Grassland Water District, and selenium load to be exempted under Appendices F or G will be determined as described in those Appendices.

(4) If the Attributable Discharge of Selenium exceeds the applicable Selenium Load Value in any given month or year during the term of this Agreement, a Drainage Incentive Fee shall be calculated in accordance with the Performance Incentive System

as stated in section IV.B. of this Agreement, and the Agreement may be subject to termination pursuant to Section VII.B.

(b) Salinity Load Values:

(1) The Salinity Load Values in Appendix E are hereby incorporated and made a part of this Agreement. These Values specify both annual and monthly salt loads.

(2) To determine if Salt Load Values are being met, the Attributable Discharge of salts will be compared to the Salt Load Value for the time period under consideration. Salt load will be measured at the inlet to the Drain (referred to as "Site A"), except that salt load discharged to the Grassland Water District from the Drainage Area during storm events will be measured at the discharge points in to the Grassland Water District, and load to be exempted under Appendices F and G will be determined as described in those Appendices.

(3) If the Attributable Discharge of Salinity exceeds the applicable Salinity Load Value in any given month or year during the term of this Agreement, a Drainage Incentive Fee shall be calculated in accordance with the Performance Incentive System as stated in section IV.B. of this Agreement.

3. Record of Decision. The Authority will implement those commitments contained in the ROD relating to this Use Agreement.

IV. DRAINAGE OVERSIGHT COMMITTEE AND PERFORMANCE INCENTIVE SYSTEM

A. Role of Drainage Oversight Committee

The Oversight Committee will meet as needed and may conduct its meetings by noticed telephone conference calls that are open to participation by interested parties. The Oversight Committee reviews progress and operation of the project including drainage reduction goals, progress in achieving water quality objectives, monitoring data, etc. It makes recommendations to the Draining Parties, RECLAMATION, and/or the Regional Board, as appropriate, regarding all aspects of the project, including modifications to project operation, appropriate mitigative actions, and termination of the Agreement if necessary. It carries out other functions required of it under this Agreement, which include determining the occurrence and extent of load exceedances, determining the Drainage Incentive Fees that are payable, and selecting projects to be funded from the Drainage Incentive Fee Account as set forth in subsection IV.B.4. For example, if any Draining Party resumes discharges into channels cleaned up through the Project,

the Oversight Committee can determine appropriate remedies, up to and including termination of this Agreement.

1. The Oversight Committee may appoint and be assisted by a technical committee as determined necessary or appropriate by the Oversight Committee.

2. The Oversight Committee may appoint one or more subcommittees comprised of experts to help in the analysis of biological or water quality monitoring data or other information relevant to the drainage issue as necessary or appropriate to assist in carrying out its role. One such subcommittee is the Mitigation Sub-Committee described in Appendix L.

3. If the Oversight Committee determines, based on monitoring data or otherwise, that adverse environmental impacts have occurred and the Oversight Committee finds those impacts to be significant, the Oversight Committee will identify appropriate mitigative actions. Appropriate mitigative actions, depending on the situation, would include, but are not necessarily limited to, interruption of a specific identified contamination pathway through hazing or habitat manipulation; increased management, enhancement, and recovery activities directed at impacted species in channels cleaned up as a result of the project; and/or, establishment and attainment of more stringent contaminant load reductions. The costs of mitigation, as well as any required clean-up, shall be borne by the Draining Parties.

4. The Oversight Committee shall also make other determinations as specified in this Agreement including without limitation those described in Sections VII.B and VII.F.

B. Performance Incentive System

The performance incentive system shall be implemented by means of the following:

1. Drainage Incentive Fee Account. The AUTHORITY shall maintain an account known as the Drainage Incentive Fee Account. Disbursements shall be made from said Drainage Incentive Fee Account only at the direction of the Oversight Committee. A detailed accounting of the Account will be provided by the AUTHORITY to member(s) of the public upon request.

2. Calculation of Drainage Incentive Fees. Based upon information from the monitoring program established pursuant to Section V of this Agreement, RECLAMATION shall calculate the Attributable Discharge for each year and month. Drainage Incentive Fees are not the result of damage to federal property and are not revenue due to the Federal Government. Drainage Incentive Fees shall be calculated based on Attributable Discharge.

(a) Preliminary and Final Calculations - Drainage Incentive Fees.

(1) Within sixty (60) days of the close of each calendar year for the duration of this Agreement, RECLAMATION shall, based on the monitoring results,

determine whether an Annual Drainage Incentive Fee or any Monthly Drainage Incentive Fees are due for such period, and if due, shall calculate the preliminary Annual Incentive Fee or Monthly Incentive Fees in accordance with Appendix C ("Selenium Load Values"), Appendix E ("Salinity Load Values"), and Appendix H ("Performance Incentive System for Selenium and Salt"). RECLAMATION shall immediately submit such calculations to the Oversight Committee.

(2) Within (ninety) 90 days of the close of each calendar year for the duration of this Agreement, the Oversight Committee shall, with the advice of any technical committee it may establish, determine the Annual Drainage Incentive Fee and any Monthly Drainage Incentive Fees. Such Annual Drainage Incentive Fee and any Monthly Drainage Incentive Fees shall be the amount calculated by RECLAMATION for each such fee reduced by the amount, if any, that is waived by the Oversight Committee pursuant to subsection (b)(1) of this section, and/or reduced or credited pursuant to subsections (b)(2), (b)(3), or (b)(4) of this subsection IV.B.2.

(3) The Annual Drainage Incentive Fees shall not exceed the Annual Drainage Incentive Fee cap of $300,000 and the sum of the Monthly Drainage Incentive Fees shall not exceed the Monthly Drainage Incentive Fee cap of $300,000 per year during Years One through Five (2010-2014) of this Agreement; thereafter the annual and monthly incentive fees shall increase and be capped as set forth in Appendix H.

(4) Once the Oversight Committee has determined the amount of any Annual Drainage Incentive Fee, it immediately shall give the Authority written notice of the amount due.

(b) Adjustment of Incentive Fees.

(1) Waiver for Uncontrollable and Unforeseeable Events. The Oversight Committee may waive the Drainage Incentive Fee, in whole or in part, only upon a finding that the AUTHORITY has shown that exceedances, in particular months or for the year as a whole, were caused by Unforeseeable and Uncontrollable Events.

(2) Duplicative Regional Board Penalties. In the event that the Regional Board or other regulatory agency imposes a financial penalty which the AUTHORITY or Draining Parties become responsible to pay for discharges of Selenium or Salt that are the subject of Drainage Incentive Fees assessed under this Agreement, the Drainage Incentive Fee owed by such parties shall be reduced by the amount of such other financial penalty. The Oversight Committee shall determine when this payment relief is applicable.

(3) Incentive Fee Credits. In order to provide incentive to reduce selenium and salinity discharges beyond the current annual Load Values, a credit toward future incentive fees will be given if the annual or monthly selenium Attributable Discharge or the

annual or monthly salinity Attributable Discharge is below the annual or monthly Load Value for such constituent. The annual and monthly incentive fee credits will be determined as set forth in Appendices "I" and "J" to this Agreement, respectively.

(4) Exceedances of both Selenium and Salinity Load Values. In the event that both the applicable Selenium Load Values and Salinity Load Values are exceeded in any given month or year, only the incentive fee for exceeding the Selenium Load Values shall be imposed.

3. Deposit of Incentive Fees. Within sixty (60) days of the receipt of the notice of the Oversight Committee's determination given in accordance with subsection IV.B.2.(a)(4), the AUTHORITY shall deposit the amount of the Drainage Incentive Fee in the Drainage Incentive Fee Account. Failure to deposit said amount in the Drainage Incentive Fee Account within ninety (90) days of receipt of the Oversight Committee's decision shall constitute grounds for immediate termination of this Use Agreement.

4. Disposition of Incentive Fees. The Oversight Committee shall determine the disposition of funds deposited in the Drainage Incentive Fee Account, taking into account the considerations and procedures set forth in this subsection IV.B.4.

(a) Such determination shall be made only after consultation with the Draining Parties and any other interested parties, and may be based on recommendations from subcommittees established by the Oversight Committee.

(b) These funds are to be used for such projects as the Oversight Committee determines will assist in meeting Selenium Load Values, Salinity Load Values, water quality objectives in the Drainage Area, and/or will enhance wildlife values in the Drainage Area or adjacent areas. In determining the disposition of Account funds, the Oversight Committee shall give special consideration to projects that will help reduce drainage production in the region. Examples of projects to be given special consideration include, but are not limited to: irrigation improvements that are likely to reduce drainage; voluntary land retirement that is likely to reduce drainage; irrigation water conveyance facility improvements that are likely to reduce drainage. It is intended that projects funded through the Drainage Incentive Fee Account will be supplemental to, and shall not replace, budgeted actions of the AUTHORITY or of RECLAMATION to accomplish drainage reduction targets. At its discretion, the Oversight Committee may accumulate funds in the Drainage Incentive Fee Account until sufficient funds have accumulated to fund larger programs or actions. Upon making its determination as to the disposition of funds in the Drainage Incentive Fee Account, the Oversight Committee shall instruct the AUTHORITY to make such disbursements from the Account to such persons and in such amounts as are consistent with that determination.

(c) It is the intent of the parties to expedite the efficient disposition and use of Annual/Monthly Drainage Incentive Fees assessed, if any, towards drainage reduction

projects. Prior to the meeting of the Oversight Committee or an appropriate technical committee established by the Oversight Committee to determine any Annual /Monthly Incentive Fees, the Oversight Committee or technical committee shall cooperate with the Draining Parties, the Authority and other interested parties to screen potential drainage reduction projects that will be submitted to it by the Draining Parties.

(d) At the time the Oversight Committee meets to determine the Annual/Monthly Incentive Fees, it shall also consider projects to be funded, including the screened proposed project(s) submitted to it by the Draining Parties, and select one or more projects to be funded from the Drainage Incentive Fee Account. Promptly following the selection of a project(s) , the Oversight Committee shall notify the Authority of the project(s) and direct the Authority to distribute funds deposited in the Drainage Incentive Fee Account for the selected project(s).

(e) If the Oversight Committee determines that there are no projects for use of Incentive Fees collected for exceedances in Years Nine and Ten (2018 and 2019) that meet the goals described in subsection IV.B.4.b., then the Oversight Committee may consider utilizing such Incentive Fees to enhance fish or wildlife values in the Drainage Area or adjacent areas.

5. Treatment of Incentive Fees Upon Termination. Drainage Incentive Fees owed by the AUTHORITY pursuant to subsection IV.B. and any funds held in the Drainage Incentive Fee Account as of the date of termination of this Agreement shall be paid, held, administered and disposed of in accordance with subsection IV.B.4. Except for Drainage Incentive Fees owed on the date of termination, the AUTHORITY shall have no obligation for Drainage Incentive Fees under the Agreement following the termination hereof.

V. MONITORING

A. The AUTHORITY shall be responsible for implementing a comprehensive monitoring program that meets the following objectives:

1. to provide water quality data for purposes of determining the Draining Parties' compliance with Selenium Load Values and Salinity Load Values as set forth in this Agreement;

2. to provide biological data to allow an assessment of whether or not any environmental impacts constitute Unacceptable Adverse Environmental Effects that have resulted from this Agreement; and

3. to provide data on sediment levels, distribution, and selenium content.

The monitoring program shall consist of the monitoring program established by the parties during the 2001 Use Agreement, as such program may be modified by the parties after

consultation with the agencies represented by the Oversight Committee. The Oversight Committee in consultation with the AUTHORITY shall resolve disagreement as to proposed modifications. Such modifications shall not constitute an amendment of this Agreement. Data collected in the course of the monitoring program may be utilized as appropriate to meet requirements of biological opinions issued in relation to this Agreement; the balance of data to meet the requirements of such biological opinions will be developed by alternate studies pursuant to Section III.H.3. of this Agreement. RECLAMATION and the AUTHORITY will compile the results of the monitoring program into an Annual Report and present it for review by the Oversight Committee.

B. On a regular basis, and in no event less frequently than monthly, the results of the monitoring program, including the monitoring results pertaining to the discharges of selenium and salts being delivered from the Drain to Mud Slough, shall be submitted to RECLAMATION, to the Oversight Committee, and to other interested parties.

C. Results of the monitoring program will be reviewed annually or as required to implement this Agreement, by the Oversight Committee.

D. The AUTHORITY shall be responsible for implementing this monitoring program; provided that, nothing contained in this Agreement is intended to extend monitoring requirements downstream of Crows Landing ("Site N") on the San Joaquin River.

VI. CONSTRUCTION, OPERATION AND MAINTENANCE

A. The AUTHORITY shall be responsible for the construction, installation, operation, maintenance, and ultimate removal, if such removal is required by RECLAMATION, of any new facilities necessary for the AUTHORITY's use of the Drain; for the operation and maintenance of all existing features of the Drain; for the repair of any damage to the Drain arising out of its use of the Drain; and for the restoration of any land requiring restoration as a result of the AUTHORITY's use of the Drain.

B. The AUTHORITY shall furnish to RECLAMATION for approval the plans and specifications for all facilities or structures that are to be constructed on Land of the UNITED STATES. The AUTHORITY shall not commence construction or installation of any such facility prior to submitting the plans and specifications to RECLAMATION for review and obtaining written approval, which approval shall not unreasonably be withheld.

C. RECLAMATION shall promptly furnish to the AUTHORITY copies of documents, drawings and other records available to RECLAMATION which are appropriate or necessary for the AUTHORITY's use of the Drain in accordance with this Agreement, as requested by the AUTHORITY in writing. The AUTHORITY shall revise such drawings to reflect new facilities and any modifications to existing facilities installed by the AUTHORITY and shall promptly furnish a copy of each revised drawing to RECLAMATION.

D. The Parties acknowledge and agree that the Draining Parties shall be responsible to the AUTHORITY for payment of all operation and maintenance, administration, and construction costs arising from performance by the AUTHORITY pursuant to this Agreement, provided, that payment for baseline operation and maintenance and administration costs incurred by the AUTHORITY for the Drain pursuant to the Transfer Agreement shall be budgeted, and repayment responsibility shall be allocated, in accordance with the terms of the Transfer Agreement without regard to this Agreement.

VII. TERM, REVISION AND TERMINATION

A. Term. This Agreement shall become effective on January 1, 2010, and unless sooner terminated in accordance with applicable terms herein, shall remain in effect through December 31, 2019 .

B. Termination for Exceedance of Selenium Load Values

1. Annual Exceedances.

(a) If the calculated annual Attributable Discharge of selenium loads in Years One through Five (2010-2014) of this Use Agreement exceeds by 20% or more the annual Selenium Load Values, RECLAMATION shall terminate this Agreement unless the Oversight Committee, after consulting with the Draining Parties, any other stakeholders, and any technical committee established by the Oversight Committee, makes an affirmative finding that the AUTHORITY has shown that such exceedance was caused by Unforeseeable and Uncontrollable Events.

(b) If the calculated annual Attributable Discharge of selenium loads in Years Six through Ten (2015-2019) of this Use Agreement exceeds the amount shown in the Mandatory Termination Chart, attached to this Agreement as Appendix "K" and incorporated herein by this reference, RECLAMATION shall terminate this Agreement unless the Oversight Committee, after consulting with the Draining Parties, any other stakeholders, and any technical committee established by the Oversight Committee, makes an affirmative finding that the AUTHORITY has shown that such exceedance was caused by Unforeseeable and Uncontrollable Events.

(c) Appendix "K," attached hereto and incorporated by this reference herein, contains the Mandatory Termination Chart described in this subsection VII.B.1 and in subsection VII.B.2 of this Agreement.

2. Monthly Exceedances. This Agreement may be terminated on account of monthly Attributable Discharge in excess of Selenium Load Values only pursuant to the conditions set forth in Paragraphs VII.C and VII.D of this Agreement.

3. Salinity Exceedances. No annual or monthly exceedances of salinity shall be the basis of termination pursuant to this section VII.B.

C. Termination by Prohibition of Discharge. This Agreement shall terminate immediately upon any final order or action by the California State Water Resources Control Board, Regional Board, Environmental Protection Agency, or any other federal, State or local government entity with jurisdiction over the drainwater discharges contemplated by this Agreement which prohibits or substantially prohibits the discharge of drainage water by the AUTHORITY into the San Luis Drain, Mud Slough, or the San Joaquin River. For purposes of this subsection VII. C., failure of the Regional Board to adopt a Basin Plan Amendment or other required order or action that would delay the compliance date for the water quality objective of 2 ppb selenium, 4-day running average, in Mud Slough until after October 1, 2010, shall be deemed a final order or action which prohibits or substantially prohibits the discharge of drainage water by the AUTHORITY into Mud Slough or the San Joaquin River.

D. Termination for Cause. Reclamation shall review this Agreement at least annually for compliance with its terms and conditions and, except as otherwise set forth herein, shall be subject to termination upon a finding that the AUTHORITY failed to comply with any of the terms or conditions of this Agreement or if Unacceptable Adverse Environmental Effects occur. For purposes of this paragraph, if RECLAMATION determines, based on available data and science and after consultation with the Oversight Committee and the AUTHORITY, that Unacceptable Adverse Environmental Effects have occurred due to the use of the Drain, RECLAMATION shall notify the AUTHORITY of its determination and provide the AUTHORITY an adequate opportunity to refute this determination. If, in RECLAMATION's judgment, the AUTHORITY fails to provide sufficient evidence refuting RECLAMATION's determination, RECLAMATION shall terminate this Agreement.

E. Termination after Notice. Except as otherwise set forth herein, RECLAMATION may terminate this Agreement upon failure of the AUTHORITY or a Draining Party to comply with any of the terms, conditions and limitations of this Agreement, if such noncompliance is continuing sixty (60) days after written notice to the AUTHORITY of such noncompliance. The requirement of continuing noncompliance for sixty (60) days after written notice does not apply to violation of terms, conditions and limitations of this Agreement, where such provisions state requirements that, if violated, cannot be cured by subsequent AUTHORITY action.

F. Termination for Resumption of Discharge to Wetland Channels. The parties to this Agreement agree that a critical purpose of this Agreement is the removal of drainage water from the channels utilized to provide water to wetland habitat in the Grassland Water District and state and federal wildlife refuges. In the event that any of the Draining Parties withdraw from the Grasslands Basin Drainage Management Activity Agreement and resume the discharge of drainage water into those channels, or if any individuals within the Drainage Area who have commenced using the Drain resume the discharge of drainage water into those channels, the

Oversight Committee shall review the impact of such resumed discharge and shall recommend appropriate remedies, up to and including termination of this Agreement. In making its evaluation, the Oversight Committee shall give special consideration to the existence of exceedances of water quality standards in the channels and to the probable causes of such exceedances.

G. Termination by the Authority. This Agreement may be terminated by the AUTHORITY upon thirty (30) days' written notice to RECLAMATION.

H. Termination upon Completion of Drain. In the event that construction of the San Luis Drain, including both the Drain as defined herein and segments that are not subject to this Agreement, is completed as an out-of-valley drainage facility, discharge permits obtained, and environmental compliance completed during the term of this Agreement, or any extension hereof, this Agreement shall terminate.

VIII. RESTORATION

Upon termination of this Agreement, at the discretion of the UNITED STATES, the AUTHORITY shall remove without delay, and at the expense of the AUTHORITY, all equipment and improvements and other facilities constructed or placed upon the Land, and shall restore said Land to as nearly the same condition as existed prior to the issuance of this Agreement and repair any damage to the Drain arising out of its use of the Drain. In the event the AUTHORITY fails to remove all equipment, improvements or facilities within a reasonable time, not to exceed sixty (60) days, the UNITED STATES may remove them and restore the land and repair the Drain at the expense of the AUTHORITY.

IX. MISCELLANEOUS

A. The AUTHORITY's use of the Land shall be subject to existing valid rights to such Land held by third parties.

B. RECLAMATION, in its discretion, may, at any time during the AUTHORITY's use of the Drain under this Agreement, have access to, or make modifications to the Drain and issue such outgrants as easements, leases, licenses or permits, so long as such access, modifications or outgrants do not unreasonably interfere with the AUTHORITY's intended use of the Drain under this Agreement; specifically, during the AUTHORITY's use of the Drain under this Agreement, RECLAMATION will not use or authorize the use of the Drain in such a manner as to reduce the AUTHORITY's use of the Drain with an authorized maximum flow of 150 CFS of drainage water.

C. The AUTHORITY shall continue to carry out the operation and maintenance obligations of the AUTHORITY described in the Transfer Agreement created pursuant to such agreement consistent with the guidelines provided by existing design operating criteria, standard

operating procedures and/or manufacturer's technical memorandums, except that any terms of this Agreement providing more specific operation and maintenance responsibilities shall supersede the Transfer Agreement.

D. This Agreement shall not be construed to affect the positions of RECLAMATION nor of AUTHORITY nor any of the Draining Parties within the Drainage Area discharging into the Drain pursuant to this Agreement concerning the question of ultimate liability for costs initially funded by the UNITED STATES in undertaking management actions with respect to the Drain, nor shall this Agreement affect the positions of the UNITED STATES, the AUTHORITY nor any other Draining Party utilizing the Drain concerning any contractual or legal obligation of RECLAMATION to provide drainage service pursuant to the San Luis Act.

E. This Agreement does not constitute a contract or an amendment of a contract as described in Section 203(a) of the Reclamation Reform Act of 1982 and the implementing rules and regulations, nor does it constitute a new contract nor an amendment of a contract for the delivery of water from the Central Valley Project within the meaning of Sections 105 and 106 of Public Law 99-546 (l00 Stat. 3050, et seq.), nor does this constitute an amendment of the Second Amended Contract for Exchange of Waters dated February 14, 1968, between the United States of America and Central California Irrigation District, Columbia Canal Company, San Luis Canal Company and Firebaugh Canal Company.

F. The UNITED STATES shall not be liable for any claims for damages, cleanup, or remedial actions arising from or attributed to discharges from the Drain by or on behalf of the AUTHORITY or the Draining Parties during the AUTHORITY's use of the Drain pursuant to the term of the First Use Agreement or this Agreement.

G. The UNITED STATES, its agents, employees, licensees and permittees shall not be liable for any damages to the property of the AUTHORITY under this Agreement by reason of any act committed on the land, save and except any damages to said property caused by or resulting from the negligent or willful act or omission of the UNITED STATES, its agents, employees, licensees and permittees to the extent provided by the Federal Tort Claims Act, 28 U.S.C. 2671 et seq.

H. The AUTHORITY shall hold the United States free and harmless from, and indemnify it against, any and all direct treatment and clean-up costs, losses, damages, claims and liabilities related thereto arising from the AUTHORITY's, or anyone or all of the Draining Party's performance or nonperformance under this Agreement; provided, that RECLAMATION shall exercise care to prevent any harm to personal and real property in carrying out its rights and responsibilities under this Agreement, and shall cooperate to the extent authorized by law in the resolution of any claims pursuant to the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq., arising from these activities; provided further the AUTHORITY shall have no obligation under this Section IX.H to provide a defense to the United States, nor to indemnify it for legal fees or

costs incurred in legal proceedings instituted against the United States relating to use of the Drain.

I. Notwithstanding anything in this Agreement to the contrary, the AUTHORITY is authorized to enter into agreements with other entities, including but not limited to one or more of the Draining Parties, pursuant to which the AUTHORITY is or will be indemnified and/or held harmless with regard to all or any portion of the AUTHORITY's obligations under this Agreement.

J. Nothing in this Agreement shall create any rights in favor of any person or entity that is not a signatory to this Agreement, save and except for rights created pursuant to the Grassland Basin Drainage Management Activity Agreement and any MOU's between the AUTHORITY and the Draining Parties within the Drainage Area.

K. The expenditure of any money or the performance of any obligation of RECLAMATION under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the AUTHORITY from any obligation under this Agreement. No liability shall accrue to the RECLAMATION in case funds are not appropriated or allotted.

L. No member of or delegate to Congress, or official of the AUTHORITY shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners in the AUTHORITY.

M. If any of the provisions of this Agreement shall be formally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties hereto. The parties agree to reform the Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

N. The terms and conditions in Sections III.D, E, and H; VI.D; VIII; and IX.D through H, J and K of this Agreement shall survive the use of the Drain and/or completion of the performance under this Agreement by the AUTHORITY and the Draining Parties and the termination of this Agreement for any cause.

THE UNITED STATES OF AMERICA

DATED: 12/22/9

By _____
Donald R. Glaser
Regional Director,
Mid-Pacific Region, Bureau of Reclamation

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

DATED: 12/21/09

By _____
Daniel G. Nelson
Executive Director

AGREEMENT FOR CONTINUED USE
OF THE
SAN LUIS DRAIN

APPENDIX "A" - Description of Lands

1. Lands within Broadview Water District, the Firebaugh Canal Water District, the Pacheco Water District, the Panoche Drainage District, the Charleston Drainage District and the Widren Water District

Containing 84,470 acres, more or less.

2. All of those portions of Sections 26,27,34,35 and 36 in T. 11 S., R. 11 E., M.D.B.&M., Sections 31, 32,33 and 34 in T. 11 S., R. 12 E., M.D.B.&M., Section 1 in T. 12S., R. 11 E., M.D.B.&M., and Sections 2,3,4,5,6,9,10,11 and 12 in T. 12S., R. 12E., M.D.B.&M., bounded on the north by the south right-of-way line of the Central California Irrigation District Main Canal, bounded on the east by the boundary of the Central California Irrigation District, bounded on the south by the north right-of-way line of the Central California Irrigation District Outside Canal, and bounded on the west by the Central California District Camp 13 Bypass Canal. Containing 5,380 acres, more or less.

3. All of those portions of Section 13, T. 12S, R. 12E, M.D.B.&M., and Sections 7,17,18 and 19, T. 12S., R. 13E., M.D.B.&M., bounded partially on the north and west by the Panoche Drainage District, bounded partially on the west, south and east by the Firebaugh Canal Water District and the Widren Water District, and bounded partially on the north by the southerly right-of way line of the Central California Irrigation District Outside Canal.

Containing 1,410 acres, more or less.

4. All of those portions of Sections 1 and 12, T. 12S. R. 12 E., M.D.B.&M., Sections 5,6, 7,8,9, 10, 11, 13, 14, 15, 16, 17 and 24, T. 12S., R. 13E., M.D.B.&M. And Sections 19,29,30,32, and 33, T. 12S., R. 14E., M.D.B.&M. being lands within the Central California Irrigation District, bounded on the north and east by the south right-of-way line of the Central California Irrigation District Main Canal, bounded on the south and west by the north right-of-way line of the Central California Irrigation District Outside Canal, bounded on the west by the boundary line of the Central California Irrigation District and bounded on the east by the Southern Pacific Railroad right-of-way line. These lands also known as the Camp 13 Drainage District. Containing 5,490 acres, more or less.

5. All of those portions of Sections 3 and 4, T. 12 S., R. 11 E. and Section 34, T. 11 S., R. 11 E., M.D.B.& M. lying southerly of the Central California Irrigation District Outside Canal, bounded on the west by the Pacheco Lift Canal, bounded on the south by the Delta Mendota Canal, and bounded on the east by the east line of said Section 3.

Containing 676 acres, more or less.

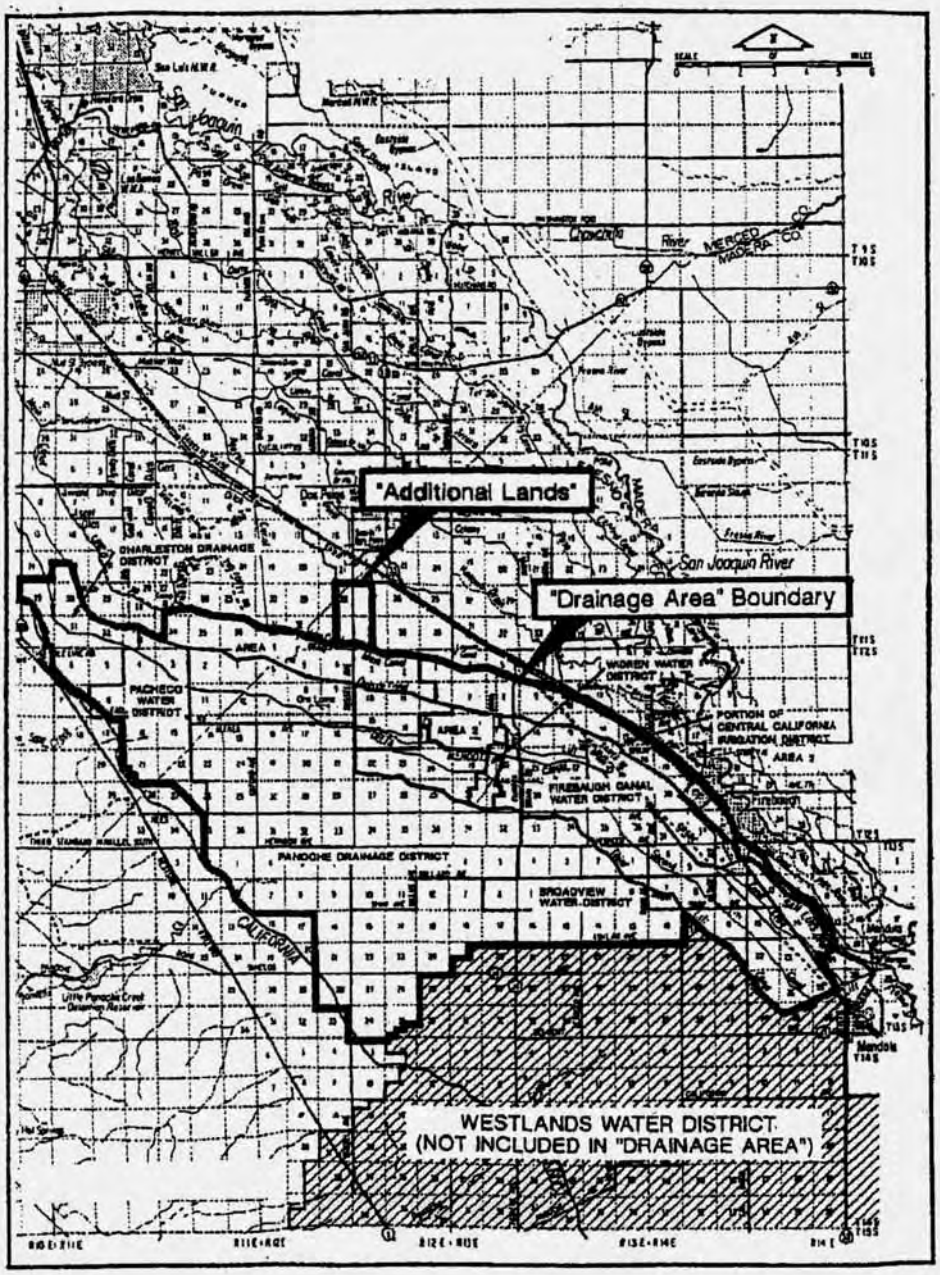
6. The west half of Sections 27 and 34, T. 11 S., R. 12 E., M.D.B.& M. lying southerly of the San Luis Drain and northerly of the Central California Irrigation District Main Canal, and the east half of Sections 28 and 33 T. 11 S., R. 12 E., M.D.B.& M. also lying southerly of the San Luis Drain and northerly of the Central California Irrigation District Main Canal.

Containing 1,100 acres, more or less.

7. Lands adjacent to right-of-ways that may be acquired in the future necessary for drainage facilities to serve the Drainage Area.

AGREEMENT FOR CONTINUED USE
OF THE
SAN LUIS DRAIN

APPENDIX "B" - Geographic Location



AGREEMENT FOR CONTINUED USE
OF THE
SAN LUIS DRAIN

APPENDIX "C" - Selenium Load Values

Note: As used in this Appendix, the term Dry Years includes years classified as Dry and Below Normal The water year classification will be established using the best available estimate of the 60-20-20 San Joaquin Valley water year hydrologic classification (as defined in Footnote 17 for Table 3 in the State Water Resources Control Board's *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*, May 1995) using data from the Department of Water Resources Bulletin 120 series.

The negotiated Selenium Load Values in the Selenium Load Charts below are based upon the TMML load values in effect on the date of this Agreement and reflect the following approaches:

(1) **Year One** (Jan –Sept 2010) monthly load values equal to an average of the 2009 monthly load values & TMML monthly load values for each water year type.
(2) **Years Two through Five** (Oct 2010 – Dec 2014): Load values equal to TMML load values.
(3) **Years Six through Eight** (Jan 2015 – Dec 2017): Loads on glide path to 2018/2019 very low loads
(4) **Years Nine-Ten** (Jan 2018- Dec 2019): Annual Loads at approximately highest month in water year type. (Crit-150lbs, Dry/BN-300 lbs, AN-450 lbs, Wet 600 lbs). Monthly loads equal to monthly TMML loads.

Any revisions to TMML load values will be handled as provided in Appendix D.

SELENIUM LOAD VALUE CHARTS

CRITICAL YEAR TYPES	2010 - 2019 Use Agreement									
	1	2	3	4	5	6	7	8	9	10
	2010	2011	2012	2013	2014	2015	2016	2017	2018*	2019*
Jan	210	151	151	151	151	119	86	54	150	150
Feb	184	93	93	93	93	73	53	33	93	93
March	183	92	92	92	92	72	52	33	92	92
April	194	101	101	101	101	79	58	36	101	101
May	199	105	105	105	105	82	60	37	105	105
June	103	69	69	69	69	54	39	24	69	69
July	105	70	70	70	70	55	40	25	70	70
Aug	111	75	75	75	75	59	43	27	75	75
Sep	107	57	57	57	57	45	32	20	57	57
Oct	55	55	55	55	55	43	31	20	55	55
Nov	55	55	55	55	55	43	31	20	55	55
Dec	152	152	152	152	152	119	87	54	150	150
Total	**1658**	**1075**	**1075**	**1075**	**1075**	**844**	**613**	**381**	**150**	**150**
Values in pounds of selenium										

DRY-BELOW NORMAL YEAR TYPES	2010 - 2019 Use Agreement									
	1	2	3	4	5	6	7	8	9	10
	2010	2011	2012	2013	2014	2015	2016	2017	2018*	2019*
Jan	338	319	319	319	319	249	179	109	300	300
Feb	254	185	185	185	185	144	104	63	185	185
March	253	184	184	184	184	144	103	63	184	184
April	264	193	193	193	193	151	108	66	193	193
May	269	197	197	197	197	154	110	67	197	197
June	150	130	130	130	130	101	73	44	130	130
July	151	131	131	131	131	102	73	45	131	131
Aug	158	137	137	137	137	107	77	47	137	137
Sep	242	235	235	235	235	183	132	80	235	235
Oct	233	233	233	233	233	182	131	79	233	233
Nov	233	233	233	233	233	182	131	79	233	233
Dec	319	319	319	319	319	249	179	109	300	300
Total	**2864**	**2496**	**2496**	**2496**	**2496**	**1947**	**1398**	**849**	**300**	**300**
Values in pounds of selenium										

SELENIUM LOAD VALUE CHARTS
(Continued)

ABOVE NORMAL YEAR TYPES	2010 - 2019 Use Agreement									
	1	2	3	4	5	6	7	8	9	10
	2010	2011	2012	2013	2014	2015	2016	2017	2018*	2019*
Jan	398	398	398	398	398	309	221	132	398	398
Feb	472	472	472	472	472	367	262	156	450	450
March	472	472	472	472	472	367	262	156	450	450
April	490	490	490	490	490	381	271	162	450	450
May	497	497	497	497	497	386	275	165	450	450
June	212	212	212	212	212	165	117	70	212	212
July	214	214	214	214	214	166	119	71	214	214
Aug	225	225	225	225	225	175	125	74	225	225
Sep	264	264	264	264	264	205	146	87	264	264
Oct	260	260	260	260	260	202	144	86	260	260
Nov	260	260	260	260	260	202	144	86	260	260
Dec	398	398	398	398	398	309	221	132	398	398
Total	**4162**	**4162**	**4162**	**4162**	**4162**	**3234**	**2306**	**1378**	**450**	**450**
Values in pounds of selenium										

WET YEAR TYPES	2010 - 2019 Use Agreement									
	1	2	3	4	5	6	7	8	9	10
	2010	2011	2012	2013	2014	2015	2016	2017	2018*	2019*
Jan	211	211	211	211	211	165	120	74	211	211
Feb	488	488	488	488	488	382	277	171	488	488
March	488	488	488	488	488	382	277	171	488	488
April	506	506	506	506	506	396	287	177	506	506
May	512	512	512	512	512	401	290	179	512	512
June	354	354	354	354	354	277	201	124	354	354
July	356	356	356	356	356	279	202	125	356	356
Aug	366	366	366	366	366	287	208	128	366	366
Sep	332	332	332	332	332	260	188	116	332	332
Oct	328	328	328	328	328	257	186	115	328	328
Nov	328	328	328	328	328	257	186	115	328	328
Dec	211	211	211	211	211	165	120	74	211	211
Total	**4480**	**4480**	**4480**	**4480**	**4480**	**3510**	**2540**	**1570**	**600**	**600**
Values in pounds of selenium										

* - The rationale for the monthly values in Years 9 and 10 is as follows: The Authority's anticipated operating target for Years 9 and 10 is zero or very low discharge during most or all months. During these years, discharge may occur during any month(s) of the year, as long as such discharge does not exceed the applicable monthly TMML selenium load value and the cumulative monthly discharges do not exceed the annual selenium load value.

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APPENDIX "D" - Revisions of TMML, TMDL, or Water Quality Objectives for Selenium in the Lower San Joaquin River

As specified in Section III.H.2.(a)(2) of the Use Agreement, if the agency with final regulatory approval authority changes the TMML, TMDL, or the Water Quality Objective for Selenium in the lower San Joaquin River, the following provisions shall apply:

(1) In the event the USEPA approves a TMDL for selenium in the lower San Joaquin River that is more stringent than the March 28, 2002 Selenium TMDL for the Lower San Joaquin River, the new selenium TMDL shall apply and the Selenium Load Values set forth in Exhibit "C" shall be adjusted as specified in section (2) of this Appendix below. In the event the USEPA approves a TMDL for selenium in the Lower San Joaquin River that is less stringent than the March 28, 2002 Selenium TMDL, the selenium load values in this Use Agreement shall not be adjusted.

(2) If the Regional Water Quality Control Board establishes a new selenium TMDL for the Lower San Joaquin River, or new selenium objectives for the Lower San Joaquin River, that include compliance dates that occur while this Use Agreement remains in effect, the Selenium Load Values set forth in Appendix "C" of this Agreement will be adjusted as follows: Upon the adopted compliance dates established by Regional Board, the Selenium Load Values will be adjusted to the lower of: (1) the Selenium Load Values set forth in Appendix C of this Agreement or (2) any applicable newly adopted Selenium Loads imposed by the Regional Board.

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APPENDIX "E" - Salinity Load Values

Salt loads have been developed utilizing a similar methodology as the 2001 Use Agreement in order to continue to have selenium loads as the driving management constraint.

SALT LOAD VALUE CHARTS

Critical Year Types	**2010 - 2019 Use Agreement**									
	1	2	3	4	5	6	7	8	9	10
	2010	2011	2012	2013	2014	2015	2016	2017	2018*	2019*
Jan	5738	4283	4283	4283	4283	3626	2888	2031	4283	4283
Feb	9081	6779	6779	6779	6779	5739	4570	3214	6779	6779
Mar	10759	8031	8031	8031	8031	6799	5414	3808	8031	8031
Apr	7918	5910	5910	5910	5910	5003	3984	2802	5910	5910
May	7760	5792	5792	5792	5792	4903	3905	2746	5792	5792
June	8026	5991	5991	5991	5991	5072	4039	2841	5991	5991
July	8111	6055	6055	6055	6055	5126	4082	2871	6055	6055
Aug	7198	5373	5373	5373	5373	4549	3622	2548	5373	5373
Sep	3802	2838	2838	2838	2838	2403	1913	1346	2838	2838
Oct	2920	2180	2180	2180	2180	1845	1469	1033	2180	2180
Nov	3035	2265	2265	2265	2265	1918	1527	1074	2265	2265
Dec	3352	2502	2502	2502	2502	2118	1687	1186	2502	2502
Annual	**77,700**	**58,000**	**58,000**	**58,000**	**58,000**	**49,100**	**39,100**	**27,500**	**13,000**	**13,000**
* The Monthly Values are equal to 2014 values								Values in Tons of Salt		

Dry/Below Normal Year Types	**2010 - 2019 Use Agreement**									
	1	2	3	4	5	6	7	8	9	10
	2010	2011	2012	2013	2014	2015	2016	2017	2018*	2019*
Jan	8353	7282	7282	7282	7282	5901	4512	3131	7282	7282
Feb	13219	11524	11524	11524	11524	9339	7141	4956	11524	11524
Mar	15660	13653	13653	13653	13653	11063	8460	5871	13653	13653
Apr	11525	10047	10047	10047	10047	8142	6226	4321	10047	10047
May	11295	9847	9847	9847	9847	7979	6102	4234	9847	9847
June	11683	10185	10185	10185	10185	8254	6312	4380	10185	10185
July	11806	10293	10293	10293	10293	8341	6378	4426	10293	10293
Aug	10477	9134	9134	9134	9134	7402	5660	3928	9134	9134
Sep	5535	4825	4825	4825	4825	3910	2990	2075	4825	4825
Oct	4250	3706	3706	3706	3706	3003	2296	1593	3706	3706
Nov	4417	3851	3851	3851	3851	3121	2386	1656	3851	3851
Dec	4879	4253	4253	4253	4253	3447	2636	1829	4253	4253
Annual	**113,100**	**98,600**	**98,600**	**98,600**	**98,600**	**79,900**	**61,100**	**42,400**	**23,700**	**23,700**
* The Monthly Values are equal to 2014 values								Values in Tons of Salt		

SALT LOAD VALUE CHARTS
(Continued)

Above Normal Year Types	2010 - 2019 Use Agreement									
	1	2	3	4	5	6	7	8	9	10
	2010	2011	2012	2013	2014	2015	2016	2017	2018*	2019*
Jan	12141	12141	12141	12141	12141	9763	7385	5007	12141	12141
Feb	19215	19215	19215	19215	19215	15451	11688	7924	19215	19215
Mar	22764	22764	22764	22764	22764	18305	13846	9388	22764	22764
Apr	16753	16753	16753	16753	16753	13471	10190	6909	16753	16753
May	16418	16418	16418	16418	16418	13202	9987	6771	16418	16418
June	16983	16983	16983	16983	16983	13656	10330	7004	16983	16983
July	17162	17162	17162	17162	17162	13800	10439	7078	17162	17162
Aug	15230	15230	15230	15230	15230	12247	9264	6281	15230	15230
Sep	8045	8045	8045	8045	8045	6469	4894	3318	8045	8045
Oct	6178	6178	6178	6178	6178	4968	3758	2548	6178	6178
Nov	6421	6421	6421	6421	6421	5163	3906	2648	6421	6421
Dec	7092	7092	7092	7092	7092	5703	4314	2925	7092	7092
Annual	**164,400**	**164,400**	**164,400**	**164,400**	**164,400**	**132,200**	**100,000**	**67,800**	**35,600**	**35,600**
* The Monthly Values are equal to 2014 values								Values in Tons of Salt		

Wet Year Types	2010 – 2019 Use Agreement									
	1	2	3	4	5	6	7	8	9	10
	2010	2011	2012	2013	2014	2015	2016	2017	2018*	2019*
Jan	12396	12396	12396	12396	12396	10679	8286	5893	12396	12396
Feb	19618	19618	19618	19618	19618	16901	13114	9327	19618	19618
Mar	23241	23241	23241	23241	23241	20022	15536	11049	23241	23241
Apr	17104	17104	17104	17104	17104	14735	11433	8132	17104	17104
May	16762	16762	16762	16762	16762	14441	11205	7969	16762	16762
June	17339	17339	17339	17339	17339	14937	11590	8243	17339	17339
July	17521	17521	17521	17521	17521	15095	11712	8330	17521	17521
Aug	15549	15549	15549	15549	15549	13395	10394	7392	15549	15549
Sep	8214	8214	8214	8214	8214	7076	5491	3905	8214	8214
Oct	6308	6308	6308	6308	6308	5434	4217	2999	6308	6308
Nov	6555	6555	6555	6555	6555	5647	4382	3117	6555	6555
Dec	7240	7240	7240	7240	7240	6238	4840	3442	7240	7240
Annual	**167,846**	**167,846**	**167,846**	**167,846**	**167,846**	**144,600**	**112,200**	**79,800**	**47,400**	**47,400**
* The Monthly Values are equal to 2014 values								Values in Tons of Salt		

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APPENDIX "F" - High Rainfall Exemption

This Appendix describes a High Rainfall Exemption that will, under certain specified circumstances, reduce the Attributable Discharge amount defined in Section 1.A. of the Use Agreement. The overall objective of this High Rainfall Exemption is to accomplish the following:

- Respond to the concern that farmers may lose their ability to control discharges to the levels required by the Use Agreement during high-rainfall months.
- Protect water quality in the San Joaquin River and the estuary downstream; and
- Be consistent with current federal and state policy.

Notwithstanding any other provision of this Appendix or of the Use Agreement, this High Rainfall Exemption is not applicable for any period for which the Oversight Committee, in its sole discretion, has determined that the actual discharge of selenium has caused significant adverse environmental impacts in Mud Slough or at any point downstream of Mud Slough pursuant to Section IV.A.3. of the Agreement.

1. When applicable: If during a running 90-day period, cumulative rainfall, measured at the Panoche Water District gauge, equals or exceeds 6 inches in either the current month, or in any of the previous three months; and, if the actual "4-day monthly equivalent low flow at Crow's Landing" during the current month is equal to or exceeds 300% of the "4-day monthly equivalent low flow at Crow's Landing" (i.e., design flow) used to calculate the TMML for that month; provided, that installation, maintenance and operation of a rainfall monitoring gauge at the Panoche Water District has been approved by the Oversight Committee and said station is being operated and maintained by the Authority or the Draining Parties at the time of the high rainfall period.

2. Calculation of Exemption for Selenium

a. The amount of discharge that is exempted is limited by a monthly and annual ceiling as follows:

i. The monthly ceiling is the lesser of the following:

a) A selenium load in pounds that, in the absence of all other discharges, would result in a 1.5 parts per billion selenium concentration at Crows Landing,

based on the actual "4-day monthly equivalent low flow" in acre feet for that month; i.e. (monthly ceiling) = (actual Crows Landing 4-day monthly equivalent low flow measured in acre feet for that month)x(1.5 ppb)x 0.002718); or

b) The highest selenium load discharged the same month of 1997, 1998, or 1999 as shown in the attached Table F-l.

ii. The annual ceiling is the amount fixed by the Basin Plan above which the discharge of selenium from agricultural subsurface drainage systems in the Grassland watershed to the San Joaquin River is prohibited, currently 8,000 pounds per year.

b. Monthly and Annual Amounts Exempted:

i. The amount of selenium discharge excused in any month would be the lesser of the following:

a) the difference between the monthly ceiling and the Selenium Load Value for that month; or

b) the difference between i) the amount calculated as follows: the amount of selenium discharged from the Drain (measured at the terminus) plus the amount of selenium in any discharges during a storm event to the Grassland Water District (measured at the discharge points) minus any amount of selenium discharge exempted under the Upper Watershed Exemption described in Appendix G and ii) the Selenium Load Value for that month.

ii. The amount of selenium discharge excused in any year would be the lesser of the following:

a) the sum of the monthly amounts excused; or

b) the difference between the annual ceiling and the annual Selenium Load Value.

3. Calculation of Exemption for Salt. When an Excessive Rainfall exemption is granted for selenium, an exemption shall also be granted for salt. The amount of salt exempted shall be calculated as follows:

Salt exemption in tons = selenium exemption in pounds x (average salt: se correlation factor) + 20% [to account for the imperfect correlation between salt and selenium] x (lbs to tons conversion)

Average salt: se correlation factor = (average ratio of monthly salt discharges to monthly selenium discharges from 1986 to 1996) = 44,350

So,

Salt exemption (tons) = selenium exemption (lbs) x 26.6

TABLE F-1
Calculation of Monthly Ceiling for Excessive Rainfall Exemption (pounds of selenium)

Month	1997 Actual	1998 Actual	1999 Actual	Higher of Columns 2,3 & 4
1	2	3	4	5
Jan	672	335	284	672
Feb	926	851	609	926
Mar	1119	1586	799	1586
April	1280	1549	529	1549
May	849	1367	482	1367
June	611	807	524	807
July	428	615	462	615
Aug	348	500	418	500
Sept	109	388	275	388
Oct	248	277	181	277
Nov	207	226	193	226
Dec	178	239	236	239

Note: The data in Table F-1 have been corrected to exclude any loads originating in the upper watershed.

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APPENDIX "G" - Upper Watershed Exemption

Under certain conditions of high rainfall in the Coastal Range, water carrying selenium loads runs off from the Upper Panoche/Silver Creek watershed, through the channels of the Grassland Area Farmers, and is discharged into the San Joaquin River through the Grassland Bypass and/or the San Luis Drain. The parties to the Use Agreement have agreed that the selenium load from the upper watershed discharged though the Bypass and the San Luis Drain under certain specified conditions should not be included in the computation of Attributable Discharges for purposes of this Use Agreement.

Notwithstanding any other provision of this Appendix G or of the Use Agreement, no amount of discharge will be exempted pursuant to this Appendix G until an Upper Watershed Selenium Monitoring System has been developed as described in this Appendix and submitted to and approved by the Oversight Committee.

Measurable upper watershed loads of both selenium and salt that enter the drainage area and are discharged from the drainage area through the Bypass; Drain or wetland channels will be exempted. The measurement of these upper watershed loads shall be in accordance with the "Upper Watershed Selenium Monitoring System" to be submitted for approval by the Oversight Committee.

1. Components of the "Upper Watershed Selenium Monitoring System" (hereinafter "UWSMS"). The UWSMS shall describe, not only the monitoring activities, but also the method of calculating the amount of selenium and salt that is to be excluded. The monitoring activities shall include the following elements:

a. The monitoring procedure to be developed shall ensure that usable data is collected from the area during a rain event. The procedure shall be fully described in the UWSMS plan and shall reflect the best currently-available science that is obtainable at reasonable cost.

b. The Storm Event Plan shall require, to the extent physically possible, that drainage sump pump operations and associated discharge of subsurface drainage cease during the period of time covered by the exemption.

c. Any measurable flow at Panoche Creek at 1-5 will trigger both 1) the implementation of the UWSMS to quantify the amount of selenium and salt entering the drainage area from the upper watershed and discharged through the Bypass or Drain and 2) the

management of the drainage channels, the Bypass and the Drain in accordance with the Storm Event Plan.

d. The UWSMS will use photographic and field observations to identify and document surface impoundment and sheet flow.

e. Groundwater will be monitored at existing, representative wells.

2. Discretion of Oversight Committee to Revise. The Oversight Committee shall have the discretion to update the UWSMS, including the method used to calculate the amount of selenium and salt that comes from the upper watershed and discharged through the Bypass, Drain or wetland channels.

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APPENDIX "H" - Performance Incentive System for Selenium and Salt

The following chart establishes the maximum annual and monthly incentive fees payable under this system for exceedances of Selenium Load Values or Salinity Load Values. In the event that both the applicable Selenium Load Values and Salinity Load Values are exceeded in any given month or year, only the incentive fee for exceeding the Selenium Load Values shall be imposed.

MAXIMUM ANNUAL AND MONTHLY INCENTIVE FEE CHART

Incentive Fee Caps	Year 1	Years 2-5	Year 6	Year 7	Year 8	Year 9	Year 10
Annual Incentive Fee Cap	$300,000	$300,000	$400,000	$400,000	$500,000	$600,000	$600,000
Monthly Incentive Fee Cap	$300,000	$300,000	$400,000	$400,000	$ 500,000	$ 600,000	$ 600,000
Total Incentive Fee Cap	$600,000	$600,000	$800,000	$800,000	$1,000,000	$1,200,000	$1,200,000

The following chart establishes the applicable charge per pound of selenium that is subject to annual and/or monthly incentive fees.

ANNUAL AND MONTHLY PER-POUND SELENIUM FEE CHART

Monthly & Annual Incentive Fees per Lb ($/Lb)	Year 1	Years 2-5	Year 6	Year 7	Year 8	Year 9	Year 10
Critical Year Type	$ 903.61	$1,395.35	$1,731.60	$1,731.60	$2,164.50	$ 4,000.00	$ 4,000.00
Dry / Below Normal Year Type	$ 523.56	$ 601.20	$ 728.60	$ 728.60	$ 910.75	$ 2,000.00	$ 2,000.00
Above Normal Year Type	$ 360.58	$ 360.58	$ 431.03	$ 431.03	$ 538.79	$ 1,333.33	$ 1,333.33
Wet Year Type	$ 334.82	$ 334.82	$ 412.37	$ 412.37	$ 515.46	$ 1,000.00	$ 1,000.00

The following chart establishes the applicable charge per ton of salt that is subject to annual and/or monthly incentive fees..

ANNUAL AND MONTHLY PER-TON SALINITY FEE CHART

Monthly & Annual Incentive Fees per Ton ($/Ton)	Year 1	Years 2-5	Year 6	Year 7	Year 8	Year 9	Year 10
Critical Year Type	$19.31	$25.86	$29.72	$27.07	$30.04	$46.15	$46.15
Dry / Below Normal Year Type	$13.26	$15.21	$17.75	$16.67	$18.24	$25.32	$25.32
Above Normal Year Type	$9.12	$9.12	10.54	$9.94	$10.95	$16.85	$16.85
Wet Year Type	$8.94	$8.94	$10.01	$9.34	$10.14	$12.66	$12.66

1. Selenium

A. Annual Incentive Fees:

Annual incentive fees are set as an annually variable flat price per pound of Attributable Discharges that exceed Annual Load Values. The applicable price per pound is shown in the Annual and Monthly Per-Pound Selenium Fee Chart above..

Maximum annual incentive fees will be $300,000 per year for Years One through Five (2010-2014); $400,000 per year in Years Six and Seven (2015-2016); $500,000 per year for Year Eight (2017); and $600,000 per year for Years Nine-Ten (2018-2019). Annual incentive fees may be reduced by the credits described in Appendix I.
If there are incentive credits in accordance with Appendix I, the credit will be added to the annual load value as follows:

Amount subject to annual incentive fees (lbs) = annual Attributable Discharge (lbs) minus the sum of the annual load value (lbs) and the incentive credit (lbs).

B. Monthly Incentive Fees:

Monthly incentive fees are set as an annually variable flat price per pound of Attributable Discharges that exceed Monthly Load Values. The applicable price per pound is shown in the Annual and Monthly Per-Pound Selenium Fee Chart above.

If the monthly exceedance is less than or equal to 5% of the Monthly Load Value there will be no monthly incentive fee.

If the monthly exceedance is greater than 5% of the monthly load value, the monthly incentive fee will apply to the entire monthly exceedance, including the first 5% of the monthly

exceedance. Maximum cumulative monthly incentive fees will be $300,000 per year for Years One through Five (2010-2014); $400,000 per year in Years Six and Seven (2015-2016); $500,000 per year for Year Eight (2017); and $600,000 per year for Years Nine-Ten (2018-2019).

2. Salt

A. Annual Incentive Fees:

Annual incentive fees are set as an annually variable flat price per ton of Attributable Discharges that exceed Annual Load Values. The applicable price per ton is shown in the Annual and Monthly Per-Ton Salinity Fee Chart above.

Maximum annual incentive fees will be $300,000 per year for Years One through Five (2010-2014); $400,000 per year in Years Six and Seven (2015-2016); $500,000 per year for Year Eight (2017); and $600,000 per year for Years Nine-Ten (2018-2019). Annual incentive fees may be reduced by the credits described in Appendix I.

If there are incentive credits in accordance with Appendix I, the credit will be added to the annual load value as follows:

Amount subject to incentive fees (tons) = annual Attributable Discharge (tons) minus the sum of the annual load value (tons) and the incentive credit (tons).

B. Monthly Incentive Fees:

Monthly incentive fees are set as an annually variable flat price per ton of Attributable Discharges that exceed Monthly Load Values. The applicable price per ton is shown in the Annual and Monthly Per-Ton Salinity Fee Chart above.

If the monthly exceedance is less than or equal to 5% of the Monthly Load Value, there will be no monthly incentive fee.

Maximum cumulative monthly incentive fees will be $300,000 per year for Years One through Five (2010-2014); $400,000 per year in Years Six and Seven (2015-2016); $500,000 per year for Year Eight (2017); and $600,000 per year for Years Nine-Ten (2018-2019).

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"APPENDIX I" - Calculation and Application of Annual Incentive Fee Credits

In order to provide incentive to reduce selenium or salt discharges beyond the current annual load value, a credit toward future annual incentive fees will be given if annual selenium or salt discharges are below the annual load value. The incentive credits will accrue until applied at the option of the Authority and will be determined at the beginning of the Agreement and each year in the following manner:

a) Annual credits earned and not applied during the 2001 Use Agreement shall be carried forward for application under this Agreement and in accordance with this Appendix I at any time when an annual credit may be applied.

b) If the annual Attributable Discharge is 90% or more of the annual Load Value, no incentive credit will be given.

c) If the annual Attributable Discharge is less than 90% of the annual Load Value, then an incentive credit will be given that can be used to offset future incentive fees.

1) If the credit is to be applied in the same water year type in which it was earned, the credit will be equal to the total pounds of selenium or tons of salt, whichever is applicable, by which the Attributable Discharge in the year in which it is earned is less than the annual Load Value in the year in which it is earned.

2) If the credit is to be applied in a different water year type than the water year type in which it was earned, the credit will be equal to the total pounds of selenium or tons of salt (whichever is applicable) by which the Attributable Discharge is less than the annual Load Value multiplied by an adjustment factor. That adjustment factor shall be defined as a ratio with the numerator being the annual Salt or Selenium Load Value for the year and water year type in which the credit is to be applied and with the denominator being the annual Salt or Selenium Load Value for the year in which the credit is to be applied and for the water year type in which the credit was earned.

d) The incentive fee credit applies only to the calculation of incentive fees and not to any other provision of this Agreement.

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"APPENDIX J" - Calculation and Application of Monthly Incentive Fee Credits

In order to provide incentive to reduce selenium or salt discharges, and in addition to the Annual Incentive Fee Credit structure set forth in Appendix "I" herein, a credit toward future monthly incentive fees will be given if monthly selenium or salt discharges are below the monthly load value. The monthly incentive credits will accrue during the calendar year until applied at the option of the Authority. Said credits will be determined at the end of each year, and must be used in the same year, as follows:

a) if the Basin Plan selenium objectives are met in the San Joaquin River (at Crows Landing) during the month the credit will be applied, available credits can be applied up to the total selenium or salinity exceedance for that month.

b) if the Basin Plan selenium objectives are not met in the San Joaquin River (at Crows Landing) during the month the credit will be applied, available credits cannot be applied for that month.

c) if application of credits is authorized in more than one month under the criteria set forth herein, the Draining Parties can utilize credits in the month(s) of their choice.

d) the Monthly Incentive Fee Credit for selenium or salt will be equal to the applicable Monthly Load Value minus total pounds of Attributable Discharge of selenium or total tons of Attributable Discharge of salt, respectively, for the month. (Monthly Load Value – Monthly Attributable Discharge = Monthly Incentive Fee Credit).

e) The monthly incentive fee credit structure set forth in this Appendix shall not apply during Years Nine and Ten (2018-2019) of this Agreement.

f) The Monthly Incentive Fee Credit applies only to the calculation of incentive fees and not to any other provision of this Agreement.

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APPENDIX "K" – Mandatory Termination for Selenium Exceedance

TERMINATION VALUE	YEAR 1	YEARS 2-5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
CRITICAL YEAR	1,990	1,290	1,075	844	612	300	300
BELOW NORMAL YEAR	3,437	2,995	2,496	1,947	1,398	600	600
ABOVE NORMAL YEAR	4,994	4,994	4,162	3,234	2,306	900	900
WET YEAR	5,376	5,376	4,480	3,510	2,540	1,200	1,200

Termination Chart values refer to pounds of Attributable Selenium Discharge

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APPENDIX "L" Mitigation for the Continued Use of Mud Slough

1. Baseline Mitigation Habitat

Baseline mitigation will be developed and maintained so long as the Use Agreement remains in effect. The Draining Parties will provide Baseline mitigation in the form of alternate wetland habitat as outlined below. This habitat will be located on USFWS lands and CDFG lands. The proposals were developed by working with USFWS & CDFG staff to determine the habitat needs within their respective wetland complexes. Ownership of all capital improvements on agency land will remain with the agencies after the term of the Use Agreement.

- CDFG Mitigation Proposal: Supply year-round water to a series of ponds between Mud Slough and the San Joaquin River. Water will be delivered through an existing pipeline and turned out into natural swales to create wetland habitat. The water surface area of the ponds will be approximately 95.3 acres. (Mud Slough affected area in China Island = 76.8 acres.) As a result of the applied water vegetation will emerge in and around the ponds. Water will likely be developed locally from wells.

- USFWS Mitigation Proposal: Create year around wetlands on USFWS lands. This proposal will establish 31.6 acres of year around wetland marsh habitat. It may create wetland Slough habitat in a drainage ditch next to the Schwab Unit (BG001). This could create a broad yet linear habitat that could provide slough mitigation habitat. The final site has not been selected. (Mud Slough affected area within San Luis Unit = 24 acres) Water will likely be developed locally from wells.

The Baseline Mitigation projects are designed to expand permanent wetlands in the area of Mud Slough to provide benefits to species such as waterfowl, shorebirds, and terrestrial wildlife. The habitat may be suitable for use by special status species including, Giant Garter Snakes, San Joaquin Valley Kit Fox and Tricolored Blackbirds.

2. Supplemental Mitigation Habitat

Supplemental mitigation will be implemented beginning in Year Six (2015) of the Use Agreement by the establishment of a "Mitigation Project Fund" held by the San Luis Delta Mendota Water Authority. Beginning in that year, the Grassland Area Farmers will be required to pay a fee per pound of Attributable selenium discharge. The fee per pound will vary depending upon the water year type and year. (See Supplemental Mitigation Fee Chart, below) The fee will be charged on the Attributable selenium pounds discharged from the first pound up to the selenium load value for that year. Loads discharged above the Load Values will incur Incentive Fees but not Supplemental Mitigation Fees.

The Supplemental Mitigation Project Fund will be administered by the San Luis Delta Mendota Water Authority (SLDMWA) and held in a separate account of the SLDMWA with transparent detailed accounting provided to the Oversight Committee and available to the public. After considering recommendations from the Mitigation Sub-Committee, the Oversight Committee will select projects to be funded from the Supplemental Mitigation Project Fund and shall authorize and direct the SLDMWA to release funds for the selected project(s).

The Mitigation Sub-Committee shall identify a list of projects to be provided to the Oversight Committee that may be funded by the Mitigation Project Fund. The Supplemental Mitigation Sub-Committee shall include a representative from each of the following, each of which shall have 1 vote: (1) The Grassland region California Department of Fish & Game wildlife areas; (2) The Grassland region United States Fish & Wildlife Service refuges; and (3) A nonprofit organization with a background in restoration efforts in the Grassland Region. The three Sub-Committee Members shall select one of their members to serve as Chairman, who is authorized to call meetings and is responsible to keep the Oversight Committee informed of all Sub-Committee meetings and actions. Two of 3 members are required for a quorum, and the vote of 2 of 3 members (regardless of the number of members present) is required to include a project on the list of projects to be provided to the Oversight Committee. The Mitigation Sub-Committee shall hold open public meetings and shall allow interested parties to have input into the selection process. The Supplemental Mitigation Project Fund shall be spent on projects that enhance fish, wildlife or ecological values in the Grasslands region. The Oversight Committee shall determine which projects are implemented.

Below are examples of the types of projects that the Oversight Committee may choose to implement with the Supplemental Mitigation Project Fund. This list is intended to give examples of potential projects but not to limit the use of the funds on other projects:

- Refuge water supply augmentation
- Increased water flows in Mud Slough after drain flows cease.
- Habitat restoration projects
- Species specific habitat establishment

3. Supplemental Mitigation Fee Charts

MAXIMUM ANNUAL SUPPLEMENTAL MITIGATION FEE

	Annual Maximum Supp. Mitigation Fee Year 6	Annual Maximum Supp. Mitigation Fee Year 7	Annual Maximum Supp. Mitigation Fee Year 8	Annual Maximum Supp. Mitigation Fee Year 9	Annual Maximum Supp. Mitigation Fee Year 10	Total Possible Supp. Mitigation Fee Generated in 5 Years
Maximum Fee	$ 112,500	$ 112,500	$ 150,000	$ 187,500	$ 187,500	$ 750,000
Above fees are calculated assuming the discharge of the total annual Load Value for that year.						

SUPPLEMENTAL MITIGATION FEE PER POUND OF SELENIUM

	SUPPLEMENTAL MITIGATION FEE PER POUND				
	$ per Lb of Discharge Year 6	$ per Lb of Discharge Year 7	$ per Lb of Discharge Year 8	$ per Lb of Discharge Year 9	$ per Lb of Discharge Year 10
Critical Year Type	$ 133.29	$ 183.52	$ 393.70	$ 1,250.00	$ 1,250.00
Below Normal Year Type	$ 57.78	$ 80.47	$ 176.68	$ 625.00	$ 625.00
Above Normal Year Type	$ 34.79	$ 48.79	$ 108.85	$ 416.67	$ 416.67
Wet Year Type	$ 32.05	$ 44.29	$ 95.54	$ 312.50	$ 312.50
The above Supplemental Mitigation Fees are paid on Attributable Selenium Discharge from first pound up to the Annual Load Value. Selenium Loads discharged above Load Values result in Incentive Fees but not Supplemental Mitigation Fees.					