



Tom Barcellos
President

September 9, 2021

Jim Costa
Vice President

Frank Mendonsa
Director

From: Lower-Tule River Irrigation District

RE: Response to Comments for Draft Environmental Report for the Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts

Joshua Pitigliano
Director

Dear Interested Party:

Alex Garcia
Director

Enclosed is a document entitled *Chapter 7- Response to Comments*, for the above referenced project. This document, together with the draft EIR for the Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts circulated in April and May of 2021, constitutes the final Environmental Impact Report (EIR) for the Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts. This final EIR has been prepared pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines (14 California Code of Regulations 15000 et seq.). CEQA requires that state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before taking action on those projects (California Public Resources Code 21000 et seq.).

Eric Limas
General Manager

Beth Grote-Lewis
Assessor

Alex Peltzer
Legal Counsel

A public hearing has been scheduled with the Lower-Tule River District Board of Directors to consider this request on Monday, September 20, 2021 at 2:00pm. The Meeting will be held at the District Office, located at 357 E. Olive Ave, Tipton, CA 93272.

Thank you for your participation in the environmental process for this project. Should you have any comments or questions please contact Eric Limas, (559) 686-4716 or at elimas@ltrid.org.

Very Respectfully,

Eric Limas, General Manager
Lower-Tule River Irrigation District

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Enclosure: Chapter 7- Response to Comments

FINAL ENVIRONMENTAL IMPACT REPORT

LOWER TULE RIVER IRRIGATION DISTRICT CROSS VALLEY CONTRACTORS CONVERSION OF WATER SUPPLY CONTRACTS AND RENEWAL OF CONVEYANCE CONTRACTS

SEPTEMBER 2021



FINAL ENVIRONMENTAL IMPACT REPORT

CONVERSION OF WATER SUPPLY CONTRACTS AND RENEWAL OF CONVEYANCE CONTRACTS

Prepared for:

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September 2021

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(Updated Draft Proposed USBR WIIN Act Repayment Contract replacement)

CHAPTER 7 - RESPONSES TO COMMENTS

7.1 - Introduction

This document, together with the draft EIR for the Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts circulated in April and May of 2021, constitutes the final Environmental Impact Report (EIR) for the Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts. This final EIR has been prepared pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines (14 California Code of Regulations 15000 et seq.). CEQA requires that state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before taking action on those projects (California Public Resources Code 21000 et seq.). This final EIR addresses the environmental effects of the Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts, which for each Cross Valley Contractor includes two components:

- The approval and execution of a contract with Reclamation that converts, pursuant to the WIIN Act, the CV Contractor's existing water supply contract for CVP water to a repayment contract authorizing prepayment of outstanding CVP construction costs; and
- The approval and execution of a contract with Reclamation and DWR that renews and updates the terms of an existing contract for the conveyance of the CV Contractor's CVP water until 2035.

The proposed conversion of the existing CVP contracts under the WIIN Act, and renewal and updating the conveyance provisions of the existing contracts into separate conveyance contracts, will allow the CV Contractors to continue receiving CVP water in the manner consistent with current and historical practices.

7.1.1 - PURPOSE

As defined by Section 15050 of the California Environmental Quality Act (CEQA) Guidelines, the Lower Tule River Irrigation District (LTRID) is serving as "Lead Agency," for preparation of the Environmental Impact Report (EIR) for the Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts (Project). The Final EIR (FEIR) presents the environmental information and analyses that have been prepared for the project, including comments received addressing the adequacy of the Draft EIR, and responses to those comments. In addition to the responses to comments, clarifications, corrections, and minor revisions have been made to the Draft EIR. The FEIR, which includes the responses to comments and the Draft EIR, will be used by the LTRID Board in the decision-making process for the project.

7.1.2 - OPPORTUNITIES FOR PUBLIC INVOLVEMENT

Notice of Preparation and Public Scoping Meeting

A Notice of Preparation/Initial Study (SCH No. 2020100075) was circulated for a 30-day public review period beginning on October 5, 2020 and ending on November 4, 2020. A scoping meeting was noticed and held on October 26, 2020. One comment letter was received from the NAHC, dated October 5, 2020, recommending consultation with California Native tribes that are traditionally and culturally affiliated with the geographic area of the proposed Project to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. No individuals presented oral comments during the scoping meeting. Subsequent to the circulation of the Draft EIR, it was noted that a comment letter from Arvin-Edison Water Storage District was provided via electronic mail to LTRID. This comment letter was inadvertently omitted from the Draft EIR; however, the comment contained in the letter have been addressed in the FIER.

Draft EIR Public Review

The Draft EIR for the Project was circulated for a 45-day public review period beginning on April 6, 2021 and ending on May 21, 2021. A total of five (5) written comment letters were received on the Draft EIR.

Section 15088 of the CEQA Guidelines requires that the lead agency evaluate comments on environmental issues received from persons and agencies that reviewed the Draft EIR and prepare a written response addressing each of the comments received. The response to comments is contained in this Chapter 7 of the Draft EIR. A list of agencies, organizations, and interested parties who have commented on the Draft EIR is provided below. A copy of each numbered comment letter and a lettered response to each comment is provided in Section 7.4, *Response to Comments*, of this chapter.

**Table 7-1
Public Comments Received on the Draft EIR**

Letter No.	Commenter	Commenter Type
1	Kern County Water Agency	Interested Party
2	Arvin-Edison Water Storage District	Interested Party
3	Shafter-Wasco Irrigation District	Interested Party
4	Arvin-Edison Water Storage District	Interested Party
5	Arvin-Edison Water Storage District	Interested Party

7.2 - Draft EIR Errata

Draft EIR Errata contains changes made to the text of the Draft EIR in response to comments received during the public review period or for purposes of clarification or correction. Changes to the draft EIR text are shown typographically by means of strikethrough of text that has been deleted and underlining of new text that has been inserted. The revisions contain clarifications and corrections that have been identified, either through public comments or by LTRID, since publication of the draft EIR. The text revisions do not result in substantive changes to either the analyses or conclusions presented in the draft EIR.

Pages 3-14 and 3-15

DIVERSION AT THE JONES PUMPING PLANT

Reclamation would divert the CV contract water from Jones Pumping Plant into the DMC and the water would be conveyed for delivery to:

- **CVP SOD contractor(s)** on the DMC, Mendota Pool or pumped into O'Neill Forebay (ONF) federal share (CVP) for delivery to CVP SOD contractor(s) within the San Luis Canal, or then pumped into the San Luis Reservoir (SNL) federal share (CVP) for delivery to CVP SOD contractor(s) within the San Felipe Division.
- **Non-CVP contractor(s)** below the end of the San Luis Canal, Reclamation would exchange the CV contract water from Reclamation's share (CVP) of ONF to DWR share (SWP) of ONF for DWR to convey the CV contract water through Dos Amigos (with federal power) to the point of delivery, unless the CV contract water is being conveyed under a State contractor's contract (Article 55), the DWR would provide State power at Dos Amigos.
- **Storage in federal share (CVP) of SNL**, Reclamation would pump the CV contract water into ONF federal share (CVP) and into federal share (CVP) SNL with federal power.
- ~~**Storage in State share (SWP) of SNL**, Reclamation would pump the CV contract water into ONF federal share (CVP) with federal power then exchange the CV contract water from Reclamation's share (CVP) of ONF to DWR share (SWP) of ONF for DWR to pump the CV contract water into SNL with State power.~~

DIVERSION AT THE BANKS PUMPING PLANT

DWR would divert the CV contract water at the Banks Pumping Plant (with federal power) and the CV contract water would flow into the State share (SWP) of ONF for delivery to either:

- **CVP SOD contractor(s)** on the DMC, Mendota Pool, San Luis Canal, or San Felipe Division, where DWR would exchange the CV contract water from DWR's share

(SWP) of ONF to Reclamation's share (CVP) of ONF. Reclamation would then deliver the CV contract water to the CVP SOD contractor(s) using federal power if applicable.

- **SWP contractor(s)**, DWR would convey the CV contract water through Dos Amigos (with federal power) to the point of delivery.
- **CVC and/or AEWS D turnouts on the California Aqueduct**, DWR would convey the CV contract water through Dos Amigos (with federal power) to the CVC and/or AEWS D turnout below the end of the Joint Use Facilities.
- **Storage in federal share (CVP) of SNL**, DWR would exchange the CV contract water from DWR's share (SWP) of ONF to Reclamation's share (CVP) of ONF for Reclamation to pump the CV contract water into federal share (CVP) of SNL with federal power.
- ~~**Storage in State share (SWP) of SNL**, DWR would pump the CV contract water into SNL with State power.~~

Page 4.4-7

4.4.3 – REGULATORY SETTING

Local

Friant Water Authority – Draft Friant-Kern Canal Water Quality Policy

The Ad hoc Water Quality Committee of the Friant Water Authority¹—the non-federal operator of the Friant-Kern Canal—has developed a Draft Friant-Kern Canal Water Quality Policy (Draft Policy). On July 23, 2020, Friant Water Authority approved submission of the Draft Policy to the United States, Department of Interior, Bureau of Reclamation (Reclamation) and directed its staff to work with Reclamation to implement the proposed policy, if approved by Reclamation.

According to the Draft Policy, it “is in response to concerns regarding the implementation of programs and projects that could introduce water of a lesser quality to the Friant-Kern Canal”. The Draft Policy includes discussion of Agronomic Impacts and Mitigation (Attachment A to the Draft Policy), a Water Quality Mitigation Ledger (Attachment B to the Draft Policy), a Water Quality Monitoring Plan (Attachment C to the Draft Policy), and a Water Quality Model(Attachment D to the Draft Policy).

¹ The Ad Hoc Committee is made up of Friant Contractor directors and district managers from Arvin-Edison Water Storage District (AEWS D), Delano-Earlimart Irrigation District (DEID), Kern-Tulare Water District, Lindsay Strathmore ID (LSID), Lower Tule River ID, Pixley ID, Porterville ID (PID), Shafter-Wasco ID (SWID), Saucelito ID (SID), and Terra Bella ID (TBID)

The Draft Policy is not final, nor is it presently in force and thus any analysis of environmental impacts as a result of the Draft Policy are speculative. As noted by Friant Water Authority in the Draft Policy when discussing “Additional Implementation Requirements,” Friant identifies “several programmatic challenges...that will continue to be evaluated and addressed” including the need to “address FWA’s authority to implement the Policy. FWA’s role is limited to complying with Federal and State laws and cannot adopt its own regulations.” Friant also states the need evaluate and address the programmatic challenge of “identify[ing] all existing programs and pump-ins and determine which are exempt from the Policy.” As the Draft Policy is not final but instead contingent on further evaluation and addressing of issues, is not enforceable by Friant Water Authority, and has not been approved by Reclamation, any analysis of environmental impacts as a result of the Draft Policy would be speculative.

Even if the Draft Policy was implemented, there would be no impact on findings of significance regarding environmental effects in this EIR because the total amount of water delivered under the contracts at issue in the Project would not be reduced. Rather, based on the Draft Policy (which is still subject to further evaluation, resolution of “several programmatic challenges,” and Reclamation approval) it appears that very small amounts of water would be reallocated to other CVP contractors within the existing place of use for CVP Water. (Table 3 at 11.)

Should the Draft Policy be adopted by Reclamation, the Project would—as with all other regulatory requirements—operate pursuant to such policy to the extent applicable.

Page 4.4-23

4.4.4 – IMPACTS AND MITIGATION MEASURES

Project Impacts

Impact 4.4-1: Violate Any Water Quality Standards or Waste Discharge Requirements or Otherwise Substantially Degrade Surface or Groundwater Quality

The Ad hoc Water Quality Committee of the Friant Water Authority²—the non-federal operator of the Friant-Kern Canal—has developed a *Draft* Friant-Kern Canal Water Quality Policy (Draft Policy). On July 23, 2020, Friant Water Authority approved submission of the Draft Policy to the United States, Department of Interior, Bureau of Reclamation (Reclamation) and directed its staff to work with Reclamation to implement the proposed policy, if approved by Reclamation.

² The Ad Hoc Committee is made up of Friant Contractor directors and district managers from Arvin-Edison Water Storage District (AEWSD), Delano-Earlimart Irrigation District (DEID), Kern-Tulare Water District, Lindsay Strathmore ID (LSID), Lower Tule River ID, Pixley ID, Porterville ID (PID), Shafter-Wasco ID (SWID), Saucelito ID (SID), and Terra Bella ID (TBID)

According to the Draft Policy, it “is in response to concerns regarding the implementation of programs and projects that could introduce water of a lesser quality to the Friant-Kern Canal”. The Draft Policy includes discussion of Agronomic Impacts and Mitigation (Attachment A to the Draft Policy), a Water Quality Mitigation Ledger (Attachment B to the Draft Policy), a Water Quality Monitoring Plan (Attachment C to the Draft Policy), and a Water Quality Model (Attachment D to the Draft Policy).

The Draft Policy is not final, nor is it presently in force and thus any analysis of environmental impacts as a result of the Draft Policy are speculative. As noted by Friant Water Authority in the Draft Policy when discussing “Additional Implementation Requirements,” Friant identifies “several programmatic challenges...that will continue to be evaluated and addressed” including the need to “address FWA’s authority to implement the Policy. FWA’s role is limited to complying with Federal and State laws and cannot adopt its own regulations.” Friant also states the need evaluate and address the programmatic challenge of “identify[ing] all existing programs and pump-ins and determine which are exempt from the Policy.” As the Draft Policy is not final but instead contingent on further evaluation and addressing of issues, is not enforceable by Friant Water Authority, and has not been approved by Reclamation, any analysis of environmental impacts as a result of the Draft Policy would be speculative.

Even if the Draft Policy was implemented, there would be no impact on findings of significance regarding environmental effects in this EIR because the total amount of water delivered under the contracts at issue in the Project would not be reduced. Rather, based on the Draft Policy (which is still subject to further evaluation, resolution of “several programmatic challenges,” and Reclamation approval) it appears that very small amounts of water would be reallocated to other CVP contractors within the existing place of use for CVP Water. (Table 3 at 11.)

The Project is and will remain subject to all applicable water quality standards and conditions, including any future potential policy—such as the *Draft* Friant-Kern Canal Water Quality—adopted by Reclamation to the extent applicable to the Project.

Appendix B-1*

(Updated Draft Proposed Long-Term Conveyance Contract replacement)

Appendix B-2*

(Updated Draft Proposed USBR WIIN Act Repayment Contract replacement)

*Appendix B-1 and B-2 were updated from the original draft contracts in the DEIR. Appendix B-2 is the draft contract for LTRID, each CVC Contractor will take action on their specific contracts.

Page 2-5**2.4.2 – Scoping Meeting**

Pursuant to Section 15206 of the CEQA Guidelines, the Lead Agency is required to conduct at least one scoping meeting for all projects of statewide, regional, or area-wide significance. The scoping meeting is for jurisdictional agencies and interested persons or groups to provide comments regarding, but not limited to, the range of actions, alternatives, mitigation measures, and environmental effects to be analyzed. In accordance with current social distancing guidance related to COVID-19, LTRID hosted a virtual scoping meeting at 11:00 a.m. on October 26, 2020, via Zoom Video Communications.

NOP and Scoping Meeting Results

Two comment letters were received. One comment letter was received from the NAHC, dated October 5, 2020, recommending consultation with California Native tribes that are traditionally and culturally affiliated with the geographic area of the proposed Project to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. One comment letter was received from Arvin-Edison Water Storage District (AEWSD), dated November 4, 2020, stating Delta water conveyed through the CVC has higher concentrations of total dissolved solids (TDS) than water conveyed from Millerton Lake through the FKC. AEWSD states they possess information regarding water quality and requests the Draft EIR address their concerns regarding water quality. AEWSD subsequently raised such concerns to the DEIR in two letters, and those comments are addressed in the FEIR and included as Appendix A-1.

No individuals presented oral comments during the October 26, 2020 scoping meeting. The NOP is included in Appendix A, along with the Summary of Proceedings from the scoping meeting.

Page 3-9**3.3.2 – Central Valley Project Water Facilities**

Further, Reclamation's Policy for Accepting Non-Project Water into the Friant-Kern and Madera Canals, dated March 7, 2008 ("Water Quality Policy"), governs water quality related to the introduction of all water into the FKC. The policy's purpose is "to ensure that water quality is protected" in the FKC. Pursuant to the policy there are various, different water quality requirements depending on the source and quality of water. Pursuant to the terms of the Water Quality Policy, the delivery of CVP water into the FKC is not subject to the Water Quality Policy, as the policy only applies to non-project water. Project water-from whatever part of the CVP including from the Delta-requires no additional evaluation beyond that already performed under the policy. Under the Water Quality Policy, "water pumped from the California Aqueduct and Cross Valley Canal into the lower Friant-Kern Canal" is an example of water that does not require additional water quality analysis. Under the Water Quality Policy, the reason that no additional water quality analysis over that which is already

conducted for Project water is required in order to convey such water through the Friant Kern Canal is "because it is physically the same as Project water." The Project is and will remain subject to all applicable water quality standards and conditions.

The Ad hoc Water Quality Committee of the Friant Water Authority³—the non-federal operator of the Friant-Kern Canal—has developed a Draft Friant-Kern Canal Water Quality Policy (Draft Policy). On July 23, 2020, Friant Water Authority approved submission of the Draft Policy to the United States, Department of Interior, Bureau of Reclamation (Reclamation) and directed its staff to work with Reclamation to implement the proposed policy, if approved by Reclamation.

According to the Draft Policy, it “is in response to concerns regarding the implementation of programs and projects that could introduce water of a lesser quality to the Friant-Kern Canal”. The Draft Policy includes discussion of Agronomic Impacts and Mitigation (Attachment A to the Draft Policy), a Water Quality Mitigation Ledger(Attachment B to the Draft Policy), a Water Quality Monitoring Plan (Attachment C to the Draft Policy), and a Water Quality Model (Attachment D to the Draft Policy).

The Draft Policy is not final, nor is it presently in force and thus any analysis of environmental impacts as a result of the Draft Policy are speculative. As noted by Friant Water Authority in the Draft Policy when discussing “Additional Implementation Requirements,” Friant identifies “several programmatic challenges...that will continue to be evaluated and addressed” including the need to “address FWA’s authority to implement the Policy. FWA’s role is limited to complying with Federal and State laws and cannot adopt its own regulations.” Friant also states the need evaluate and address the programmatic challenge of “identify[ing] all existing programs and pump-ins and determine which are exempt from the Policy.” As the Draft Policy is not final but instead contingent on further evaluation and addressing of issues, is not enforceable by Friant Water Authority, and has not been approved by Reclamation, any analysis of environmental impacts as a result of the Draft Policy would be speculative.

Even if the Draft Policy was implemented, there would be no impact on findings of significance regarding environmental effects in this EIR because the total amount of water delivered under the contracts at issue in the Project would not be reduced. Rather, based on the Draft Policy (which is still subject to further evaluation, resolution of “several programmatic challenges,” and Reclamation approval) it appears that very small amounts of water would be reallocated to other CVP contractors within the existing place of use for CVP Water. (Table 3 at 11.)

³ The Ad Hoc Committee is made up of Friant Contractor directors and district managers from Arvin-Edison Water Storage District (AEWSD), Delano-Earlimart Irrigation District (DEID), Kern-Tulare Water District, Lindsay Strathmore ID (LSID), Lower Tule River ID, Pixley ID, Porterville ID (PID), Shafter-Wasco ID (SWID), Saucelito ID (SID), and Terra Bella ID (TBID)

The Project is and will remain subject to all applicable water quality standards and conditions, including any future potential policy—such as the *Draft Friant-Kern Canal Water Quality*—if adopted by Reclamation and to the extent it is applicable to the Project.

7.3 - Comments and Response to Comments

CEQA Guidelines Section 15088 requires LTRID, as the lead agency, to prepare a Final EIR that evaluates and addresses all substantive comments received on the Draft EIR. The FEIR must include a list of the individuals, organizations, and agencies that provided comments on the Draft EIR, and must contain copies of all comments received during the public review period, along with the lead agency's responses.

Comments

The comment letters received on the Draft EIR are addressed in this section. Two written comment letters were received during the public review and comment period, with three additional written submittals received after the close of the comment period on ending on May 21, 2021, as listed in Table 7-1. Each comment contained in the letters has been assigned a reference code. The responses to reference code comments follow each letter, as listed below in Table 7-2.

Table 7-2
List of Draft EIR Written Comments Received

Comment Letter (# of Individual Comments)	Commenter Name, Agency, or Organization	Date Comment Received	Comment	Response
1	Holly Melton, Kern County Water Agency	May 21, 2021	A	Provided Below
2	Matthew Adams, Arvin Edison Water Storage District	May 21, 2021	A-G	Provided Below
2b	Andrew Safford, EKI Environment & Water, for Arvin Edison Water Storage District	May 21, 2021	A-E	Provided Below
3*	Doug Gosling, Shafter Wasco Irrigation District	May 25, 2021	A-F	Provided Below
4*	Jeevan Muhar, Arvin Edison Water Storage District	August 16, 2021	A-V	Provided Below
5*	Jeevan Muhar, Arvin Edison Water Storage District	August 16, 2021	A	Provided Below

*Received after the close of the 45 day public comment period, which ended on May 21, 2021.

Responses to Comments

7.3.1 - GLOBAL RESPONSES TO COMMENTS

Global Response #1 (Project Overview and Water Quality)

Several commenters have raised concerns regarding potential Project-related impacts to water quality. The overall Project is described in Chapter 1, Executive Summary, and Chapter 3, Project Description, of the Draft EIR. The Draft EIR was prepared to evaluate the potential environmental impacts associated with the conversion of seven Cross Valley (“CV”) Contractors’ water supply contracts with the U.S. Department of Interior, Bureau of Reclamation (“Reclamation”), pursuant to the Water Infrastructure Improvement for the Nation Act, Pub. L. 114-322 (“WIIN Act”); and the long-term renewal of a conveyance contract by each of the CV Contractors with Reclamation and the California Department of Water Resources (“DWR”). (Draft EIR, page 1-1.)

The CV Contractors include: Lower Tule River Irrigation District, Pixley Irrigation District, Hills Valley Irrigation District, Tri-Valley Water District, the County of Tulare, the County of Fresno, and Kern-Tulare Water District. (Draft EIR, page 1-1.) The CV Contractors’ CVP water supply contracts amount to 128,300 acre-feet (“af”) per year, though historical deliveries are generally less due to water availability, pumping constraints, available exchanges or transfers, and the timing of deliveries. (Draft EIR, page 1-3.) From 1998 to 2019, the annual deliveries of CVP water to CV contractors have averaged 26,918 af, with a maximum of 118,507 af and a minimum of 0 af. (Draft EIR, page 1-3.) Under the CV Contractors’ Central Valley Project (“CVP”) water supply contracts, Reclamation delivers CVP water from the Sacramento/San Joaquin River Delta (“Delta”), conveyed by DWR through State Water Project (“SWP”) facilities. That water is then conveyed through the Cross Valley Canal (“CVC”) in the southern San Joaquin Valley (“SJV”), which extends from the California Aqueduct, east to the southern point of the Friant-Kern Canal (“FKC”). (Draft EIR, page 1-1.) Because the CV Contractors are located along the FKC, they do not receive water directly from the CVC; instead, CVP water is delivered predominantly through exchanges and transfers of water with other water districts or agencies in the SJV.

As identified in the Executive Summary, the Draft EIR Project-related impacts on hydrology and water quality were evaluated in Draft EIR Section 4.4 (pages 4.4-1 through 4.4-27). As discussed therein, the proposed Project does not involve the construction of any new facilities, nor will it result in any direct or indirect change to the quality or quantity of water delivered to the CV Contractors. (Draft EIR, page 4.4-23.) The water supply source(s) would remain the same, as would the means of conveyance. (Draft EIR, page 4.4-23.) As such, the Draft EIR concludes for Impact 4.4-1 that there would be no violation of any water quality standards or waste discharge requirements, or other substantial degradation of surface water or groundwater quality. (Draft EIR, page 4.4-20, Impact 4.4-1.)

Global Response #2 (Reverse Flow Operations)

Commenters have raised concerns about water quality with reverse flow operation of the FKC, where water is introduced to the FKC at its southern end from the CVC and other sources and pumped to the upper reaches. As noted in the Draft EIR, reverse flow operation is part of FWA's canal operations procedures, which provide:

“Reverse flow

Water contractors with facilities that tie into the FKC within the reaches upstream of the Kern Check can introduce supplemental flows into the system and reverse flow these deliveries upstream as far as Lake Woollomes. Historical introductions have been by means of siphons in the Kern Check along with pumps within the Shafter and Poso Checks. The addition of the bi-directional intertie with the Cross Valley Canal allows water to be directly introduced into the FKC within the Kern Check. This intertie was installed and approved under USBR guidelines. All water coming into the FKC is metered for flow rate accuracy and totalized for quantity. Reverse flow introductions in the FKC are either diverted to contractors within the pumped-in reach or pumped over the upstream check structure in order to satisfy demand. Reverse flow pump installations may be installed at the Shafter, Poso, and Reservoir Check Structures to further reverse flow any water in excess of each check's demands. All flows introduced into the FKC are coordinated through the FWA Water Operations Department, USBR, introducing contractors, and receiving contractors.”

(Draft EIR, page 3-8.)

Consistent with FWA's canal operations procedures, CVP water deliveries to contractors on the FKC are either made by gravity flow from Millerton Lake, or alternatively, from other sources such as the Delta, pumped into the southern end of the FKC at its intertie with the CVC, to the upper reaches of the FKC. (Draft EIR, page 3-7.) The practice of introducing CVP water from the CVC, which has a typically higher total dissolved solids (“TDS”) concentration than water from Millerton Lake, into the FKC, is consistent with FWA's historical canal operations procedures, as well as Reclamation's Policy for Accepting Non-Project Water into the Friant-Kern and Madera Canals, dated March 7, 2008 (“Water Quality Policy”), which applies the same water quality standards to all CVP “Project Water.” (Draft EIR, pages 3-9; 4.4-22.)

Reclamation deliveries in the region are made pursuant to the standards and conditions set forth in the Operational Guidelines for Water Service Friant Division Central Valley Project, the CVC Operations Manual, and the Friant Operational Guidelines. (Draft EIR, pages 3-8; 4.4-22.) Water quality related to the introduction of water from non-Project sources into the FKC is governed by Reclamation's Policy for Accepting Non-Project Water into the Friant-Kern and Madera Canals, dated March 7, 2008 (“Water Quality Policy”). Project Water is defined in the Water Quality Policy as “[w]ater that has been appropriated by the United States for the Friant Division of the CVP,” sourced from the San Joaquin River watershed. The Water

Quality Policy was adopted to “ensure that water quality is protected” in the FKC. (Draft EIR, page 4.4-22.)

Maximum contaminant levels (“MCLs”) for California governing the amounts of TDS, boron, sodium, chloride, bicarbonate, and pH present in municipal and domestic water supplies are contained in Title 22 of the California Code of Regulations. (Draft EIR, page 4.4-19.) All CVP water that is introduced to the FKC is and will be analyzed for Title 22 and other constituents. (Draft EIR, page 4.4-22, fn. 3.) Project Water, including water from the Delta, is not subject to additional water quality analysis because the CVP is generally subject to all applicable water quality standards and conditions. (Draft EIR, page 4.4-23.)

The Ad hoc Water Quality Committee of the Friant Water Authority—the non-federal operator of the Friant-Kern Canal—has developed a *Draft* Friant-Kern Canal Water Quality Policy (Draft Policy). On July 23, 2020, Friant Water Authority approved submission of the Draft Policy to the United States, Department of Interior, Bureau of Reclamation (Reclamation) and directed its staff to work with Reclamation to implement the proposed policy, if approved by Reclamation.

According to the Draft Policy, it “is in response to concerns regarding the implementation of programs and projects that could introduce water of a lesser quality to the Friant-Kern Canal”. The Draft Policy includes discussion of Agronomic Impacts and Mitigation (Attachment A to the Draft Policy), a Water Quality Mitigation Ledger (Attachment B to the Draft Policy), a Water Quality Monitoring Plan (Attachment C to the Draft Policy), and a Water Quality Model (Attachment D to the Draft Policy).

The Draft Policy is not final, nor is it presently in force and thus any analysis of environmental impacts as a result of the Draft Policy are speculative. As noted by Friant Water Authority in the Draft Policy when discussing “Additional Implementation Requirements,” Friant identifies “several programmatic challenges...that will continue to be evaluated and addressed” including the need to “address FWA’s authority to implement the Policy. FWA’s role is limited to complying with Federal and State laws and cannot adopt its own regulations.” Friant also states the need evaluate and address the programmatic challenge of “identify[ing] all existing programs and pump-ins and determine which are exempt from the Policy.” As the Draft Policy is not final but instead contingent on further evaluation and addressing of issues, is not enforceable by Friant Water Authority, and has not been approved by Reclamation, any analysis of environmental impacts as a result of the Draft Policy would be speculative.

Even if the Draft Policy was implemented, there would be no impact on findings of significance regarding environmental effects in this EIR because the total amount of water delivered under the contracts at issue in the Project would not be reduced. Rather, based on the Draft Policy (which is still subject to further evaluation, resolution of “several programmatic challenges,” and Reclamation approval) it appears that very small amounts of water would be reallocated to other CVP contractors within the existing place of use for CVP Water. (Table 3 at 11.)

The Project is and will remain subject to all applicable water quality standards and conditions, including any future potential policy—such as the *Draft* Friant-Kern Canal Water Quality—if adopted by Reclamation and to the extent it is applicable to the Project.

The proposed Project, which involves the conversion of CVP contracts and renewal of conveyance contracts, will merely allow the CV Contractors to continue receiving CVP water in the manner consistent with historical practices—a continuation of baseline conditions. No direct or indirect impacts to water quality standards or discharges will occur as a result of the proposed Project. (Draft EIR, page 4.4-23.)

Global Response #3 (Current and expected water quality, with or without the Project)

Section 4.4.2 of the Draft EIR describes the environmental setting of the SJV for purpose of identifying and describing water quality with and without the proposed Project. Groundwater quality is addressed on pages 4.4-3 through 4.4-5 of the Draft EIR. Surface water quality is addressed on pages 4.4-20 through 4.4-23. As noted in the Draft EIR, “[t]he practice of occasionally introducing CVP water allocated under the CV contract and delivered through the Delta into the FKC is a long-standing practice that has historically occurred and is a baseline project condition.” (Draft EIR, page 4.4-21.) Water quality is protected in the FKC by the Water Quality Policy, which sets various water quality requirements depending on the source and quality of water introduced. (Draft EIR, page 4.4-22.) Under the Water Quality Policy, “water pumped from the California Aqueduct and Cross Valley Canal into the lower Friant-Kern Canal” is an example of water that does not require additional water quality analysis because it is “physically the same as Project water.” (Draft EIR, pages 4.4-22 through 4.4-23.) Because the proposed Project would merely allow the CV Contractors to continue receiving CVP water in the manner consistent with ongoing and historical practices, there is no difference between the current and expected water quality in the CVC or the FKC. As such, the potential sources of contaminants, such as spills or leaks into the conveyance system, including the CVC and the FKC, would be similar for conditions with or without the proposed Project. (Draft EIR, page 4.4-21.) Further, the *Draft* Friant Water Authority Water Quality Policy is not final, nor is it presently in force and thus any analysis of environmental impacts as a result of the Draft Policy are speculative. Moreover, even if the Draft Policy was implemented, there would be no impact on findings of significance regarding environmental effects in this EIR because the total amount of water delivered pursuant to the Project would not be reduced. (Revisions to Draft EIR, page 4.4-7.) Moreover, actions taken with or without the proposed Project will remain subject to the terms of all applicable laws and regulations governing water quality, as well as the conditions contained in Reclamation’s Operational Guidelines, the CVC Operations Manual, the Friant Operational Guidelines, and the 2008 Water Quality Policy. (Draft EIR, 4.4-22.)

Global Response #4 (Antidegradation Analysis)

The Draft EIR includes discussion of potential water quality effects with respect to the federal and State antidegradation policies. The descriptions of the federal antidegradation policy (Draft EIR, page 4.4-10), the State policy (Draft EIR, page 4.4-14) and SWRCB Resolution No. 68-16 as it applies to degradation of groundwater (Draft EIR, page 4.4-18),

are sufficient for purposes of the Draft EIR analysis. The descriptions summarize the key provisions of the policies, which ensure that the level of water quality is offset to maintain existing uses and prevent degradation of surface water and groundwater quality. Consistent with the antidegradation policies, permits issued under the Clean Water Act or Porter-Cologne Act for activities conducted under the proposed Project must incorporate provisions to ensure that the federal and State policies are met. No issuance of such permits are included in the Project.

Comment Letter 1



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May 21, 2021

50 - Environmental

Mr. Eric Limas
Lower Tule River Irrigation District
357 East Olive Avenue
Tipton, CA 93272

Re: Draft Environmental Impact Report for the Cross Valley Contractors
Conversion of Water Supply Contracts and Renewal of Conveyance
Contracts

Dear Mr. Limas:

The Kern County Water Agency (Agency) would like to thank you for the opportunity to review and comment on the Draft Environmental Impact Report (EIR) for the Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts (Project) proposed by Lower Tule River Irrigation District (Lower Tule).

The Agency was created by the California State Legislature in 1961 to contract with the California Department of Water Resources (DWR) for State Water Project (SWP) water. The Agency has contracts with water districts (Agency Member Units) throughout Kern County to deliver SWP water. The Agency also maintains and operates the Cross Valley Canal (CVC), the water conveyance facility in the southern San Joaquin Valley (SJV) conveys water to the seven Cross Valley Contractors (CV Contractor) and/or their exchange partners. Therefore, the Agency is uniquely qualified to provide comments.

Comment 1: California Department of Water Resources and Cross Valley Contractors must coordinate with the Agency for deliveries of any water supply into our service area.

The Project involves the renewal of existing contracts for the conveyance of CV Contractor water supplies (pg. 3-1). Those water supplies, among others, are conveyed either directly or by exchange through the CVC which is operated and maintained by the Agency. It is imperative that the California

1-A

Mr. Eric Limas
Draft Environmental Impact Report for the Cross Valley Contractors Conversion of Water Supply Contracts and
Renewal of Conveyance Contracts Project
May 21, 2021
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Cont

Department of Water Resources (DWR) and the CV Contractors coordinate with the Agency for delivery of all Central Valley Project water supplies into Kern County. The Agency is responsible for the coordination and accounting of deliveries via the California Aqueduct within its service area, and for ensuring that Agency Member Unit water supplies are not impacted. Therefore, DWR and the CV Contractors must work with Agency staff to manage the conveyance of CV Contractor water supplies entering the Agency's service area which should be described in the Draft EIR.

Agency staff are available to work with Lower Tule to ensure the Agency's concerns are adequately addressed. If you have any questions, please contact Trent Taylor of my staff at (661) 634-1491.

Sincerely,



Holly Melton
Water Resources Manager

Response to Comment Letter 1: Kern County Water Agency (May 21, 2021)

- A. The participation of the Kern County Water Agency (KCWA) in the public review of this document is appreciated. The commenter states that KCWA was created in 1961 by the California State Legislature to contract with the California Department of Water Resources (DWR) for State Water Project (SWP) water, and the KCWA maintains and operates the Cross Valley Canal (CVC). The comments further state that DWR and the CV Contractors need to coordinate with the KCWA for delivery of all CVP water into Kern County.

Thank you for your comment. The comment is noted for the record and will be provided to the LTRID Board for consideration. The Friant Water Authority (FWA) coordinates water deliveries through the CVC/FKC Intertie to or from the FKC for approved deliveries with KCWA, pursuant to the Friant-Kern Canal/Cross Valley Canal Intertie Operating Agreement, entered into on April 23, 2010, and incorporated into the Draft EIR by reference. (Draft EIR, page 2-8.) Provision 8 of the 2010 Intertie Operating Agreement states that “delivery of water into the FKC shall be consistent with the terms of Reclamation’s policies, including but not limited to, water quality monitoring, measurement, and compliance with all applicable State and Federal laws and regulations.” As stated in the Draft EIR, “[t]he Project is and will remain subject to all applicable water quality standards and conditions.” (Draft EIR, page 3-9.)

Comment Letter 2

May 21, 2021

VIA E-MAIL

Mr. Eric Limas, General Manager
Lower-Tule Irrigation District
357 E. Olive Ave.
Tipton, CA 93272

Re: Comments on Draft Environmental Impact Report for Cross Valley Contractors
Conversion of Water Supply Contracts and Renewal of Conveyance Contracts

Dear Mr. Limas:

On behalf of Arvin-Edison Water Storage District (“AEWSD”), thank you for the opportunity to comment on the Draft Environmental Impact Report (“Draft EIR”) for the proposed Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts project (the “Project”).

AEWSD is generally supportive of the contract conversions and renewals. As you know, however, we are also extremely concerned about potential water quality impacts associated with introduction of water from the Cross Valley Canal (“CVC”) into the Friant-Kern Canal (“FKC”). AEWSD is comprised of approximately 132,000 acres of mostly prime farmland supplied with water from surface and groundwater supplies. It was organized in 1942 for the express purpose of contracting with the United States for water service from the Central Valley Project (“CVP”), among other things. AEWSD is a Friant division contractor and receives high-quality water from Millerton Lake via the FKC. AEWSD has a fully vested long-term renewal contract for 40,000 acre-feet (“AF”) of Class 1 Water and 311,675 AF of Class 2 Water.¹

Degradation of the high-quality Millerton Lake supplies for which AEWSD contracted would seriously harm growers within the District, many of whom raise citrus, almonds, and vineyard crops – all of which are particularly sensitive to constituents of concern such as total dissolved solids (“TDS”), boron, sodium, chloride, bicarbonate, and pH. Projects like this one can cause

¹ Contract No. 14-06-200-229-LTR1, Exhibit E, document [1] on the enclosed CD.

salts and boron introduced into the FKC to accumulate in AEWSD's groundwater.² The Friant Water Authority (FWA), in a 2012 study, described in detail some of the harms to downstream contractors caused by the replacement of some FKC supplies with "recirculated" CVP water released under the San Joaquin River Restoration Settlement, recaptured in the Delta, and delivered through the California Aqueduct or the CVC.³ Similar concerns apply to any introduction of lower quality water into the FKC. Because AEWSD lies at the southern end of a closed basin and has the most southerly intake off the FKC, it will bear the brunt of any decreased FKC water quality. Thus, FKC water quality conditions are of critical importance to us.

2 - A
Cont

Consistent with these water quality concerns, our November 4, 2020, comments on the Notice of Preparation for the Draft EIR explained that Delta water conveyed through the CVC generally has higher concentrations of Total Dissolved Solids, among other constituents, than water drawn from Millerton Lake and conveyed through the FKC – and, as a result, introducing CVC water into the FKC may significantly impact the quality of both surface water and groundwater, as well as agricultural land uses and water banking programs within and involving AEWSD. We explicitly requested that the Draft EIR address these and other direct, indirect, and cumulative water quality impacts. We further noted that AEWSD has collected a substantial amount of current and historic information regarding the quality of relevant water supplies (including the FKC, CVC, and groundwater) and we offered to make that information available to the EIR's preparers.

You can imagine our surprise and disappointment, then, upon finding that the Draft EIR does not meaningfully address water quality issues. Worse still, the document completely ignores our collaborative offer to help identify and address those issues. In fact, the portions of the Draft EIR purporting to address the concerns of interested stakeholders do not even acknowledge the existence of our comment letter.

As explained below and in the attached expert technical report from EKI Environment & Water, Inc. ("EKI") the Draft EIR's failure meaningfully to address water quality issues violates the California Environmental Quality Act ("CEQA"). **Unless the EIR is revised to fully address all relevant water quality issues – including, without limitation, existing conditions, direct impacts, indirect impacts, cumulative impacts, and appropriate mitigation – it will not provide a legally defensible basis to approve the Project.**

2 - B

Additional, specific comments include the following:

2 - C

² See Memorandum from Dr. Kenneth D. Schmidt dated May 16, 2017. This memorandum and Dr. Schmidt's resume are documents [2] and [3], respectively, on the enclosed CD.

³ See Friant Water Authority, Evaluation of Impacts from Use of Re-Circulated San Joaquin River Water (November 2012), document [4] on the enclosed CD. Documents [5] through [7] are scientific papers further describing impacts of these constituents on agricultural uses and soils.

1. An EIR must provide a clear and specific description of the environmental conditions in the project area.⁴ Consistent with that requirement, lead agencies have an affirmative obligation to obtain, analyze, and quantify any data necessary to provide decision-makers and the interested public with a full understanding of environmental conditions (and potential impacts thereto).⁵ Here, the Draft EIR does not provide any specific information about current or expected water quality in the CVC or the FKC, with or without the Project. There is no reasonable excuse for that failure – the data is readily available, AEWSD has provided it to cross valley contractors in the past,⁶ and we have offered to make it available to the preparers of the EIR.⁷ The courts have not hesitated to strike down CEQA documents for similar errors.⁸
2. Relatedly, the EIR fails properly to resolve the Project’s conflict with California antidegradation policy. The document admits the Project cannot conform to the State Water Resources Control Board’s antidegradation requirements, but no mitigation is identified for this significant impact. Instead, the EIR seeks to sweep the problem under the rug by suggesting other introductions of CVC water into the FKC render antidegradation violations “part of the baseline.” But allegations of previous non-compliance do not excuse *this Project* from otherwise-applicable requirements. Moreover, *this EIR* does not identify any substantial evidence demonstrating that past and future conditions will be identical for all alternatives. On the contrary (and as noted above), the EIR fails to provide any specific information about “baseline,” “project,” or “cumulative” water quality conditions.
3. The EIR also fails meaningfully to address ongoing revisions to the Bureau of Reclamation’s 2008 water quality policy for the FKC and Madera Canal. Those revisions

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2 - D

2 - E

⁴ See 14 Cal Code Regs §15125; *San Joaquin Raptor/Wildlife Rescue Ctr. v County of Stanislaus*, 27 Cal. App. 4th 713 (1994).

⁵ See, e.g., *Cadiz Land Co. v. Rail Cycle*, 83 Cal. App. 4th 73, 94 (2000) (invalidating CEQA analysis for failure to investigate and quantify existing water conditions); *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296 (1988) (invalidating CEQA analysis based on agency’s failure to gather relevant data).

⁶ See, e.g., Oct. 12, 2018, email from J. Muhar to S. Grass (Kern-Tulare Water District) re: Water Quality, document [8] on the enclosed CD (with updated source data).

⁷ See Nov. 4, 2020, letter from M. Adams to E. Limas re: AEWSD scoping comments.

⁸ See, e.g., *Arvin-Edison Water Storage District v. South Valley Water Banking Authority* (Ventura County Superior Court No. 56-2018-00509394) (2018) (invalidating CEQA analysis by Pixley Irrigation District, a member of the SVWBA and a cross valley contractor, for failure to provide detailed information about water quality conditions in the FKC in connection with a separate project).

are important for several reasons. First, they confirm that impacts to FKC water quality are reasonably foreseeable and potentially significant – and must therefore be addressed under CEQA. Second, they demonstrate widespread recognition and acceptance of the obligation to maintain FKC water quality – including by cross valley contractors.⁹ Third, and directly contrary to the EIR’s assumptions, the revisions establish water quality thresholds, monitoring, and mitigation that focus on the water quality differences between Millerton Lake water and non-Millerton Lake water, rather than abstract distinctions between “project” and “non-project” water. The EIR must be revised to properly account for these revisions, and the document should explicitly confirm the Project will comply with all applicable provisions of the final, revised policy.¹⁰

2 - E
Cont

4. The EIR’s treatment of the 2006 CVC Operating Agreement is likewise flawed and inadequate. Article 9(c) of the Operating Agreement explicitly recognizes that delivery of water from the CVC to the FKC can adversely impact AEWS and *requires* parties desiring to introduce CVC water into the FKC to provide AEWS with “due consideration” for such impacts. True enough, this requirement does not apply to water provided under existing and renewed water supply contracts with the United States. But that exception is inapplicable here. The Project has two components: (a) *converting* (as distinguished from *renewing*) water supply contracts with the United States; and (b) and *renewing conveyance contracts with the State of California* (as distinguished from *water supply contracts with the United States*). Neither one falls within the Article 9(c) exception. And Article 34 of the Operating Agreement (a provision nowhere mentioned in the Draft EIR) confirms that AEWS has not otherwise relinquished any of its rights or interests in maintaining the quality of water in the FKC. Therefore, the EIR must be revised to identify “due consideration” (*i.e.*, mitigation) for water quality impacts to AEWS.
5. Provision 8 of the 2010 Intertie Operating Agreement further provides that “delivery of water into the FKC shall be consistent with the terms of Reclamation’s policies, including but not limited to, water quality monitoring, measurement, and compliance with all

2 - F

2 - G

⁹ See, e.g., Minutes and supporting material from Friant Water Authority July 23, 2020, Board of Directors Meeting, documents [9] and [10] on the enclosed CD. Indeed, documents [11] through [16] on the enclosed CD support the consensus that the 2008 water quality policy should – and will – be strengthened.

¹⁰ The revisions are a reasonably foreseeable, probable project and, as such, must be addressed in the EIR. 14 Cal. Code Regs. §§ 15065(a)(3); 15130(b)(1)(A); 15355(b); see also document [17] on the enclosed CD (Bureau of Reclamation statement regarding revisions to policy). That is particularly true because the revisions establish water quality standards the violation of which would be a significant impact. See CEQA Guidelines, Appendix G; Draft EIR pp. 4-4.19 to 4-4.20. And, if that weren’t enough, lead agencies have an obligation to accurately identify and properly disclose ongoing studies relevant to areas of environmental controversy. See *California Oak Foundation v. Regents of the University of California*, 188 Cal. App. 4th 227, 263-64 (2010).

Mr. Eric Limas, General Manager

May 21, 2021

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applicable State and Federal laws and regulations.” For all of the reasons set forth above, the Draft EIR simply does not provide information, data, or analysis sufficient to meaningfully determine whether the Project will comply with this mandatory water quality requirement.

Thank you in advance for considering AEWSD’s concerns on this important matter. We stand ready to discuss the Project and the EIR at your earliest convenience.

Sincerely,



Matthew Adams

cc: Board of Directors, AEWSD (w/out enclosures)
Jeevan Muhar, AEWSD

2 - G
Cont

Response to Comment Letter 2: Arvin-Edison Water Storage District (May 21, 2021)

A. Response to Comment 2-A

The participation of the Arvin-Edison Water Storage District (AEWSD) in the public review of this document is appreciated. The commenter provides background on their organization and their overall support of contract conversions and renewals. The commenter states their concern regarding “... potential water quality impacts associated with introduction of water from the Cross Valley Canal (“CVC”) into the Friant-Kern Canal (“FKC”).” In particular, the commenter notes the potential impacts that could result from the introduction of constituents such as total dissolved solids (“TDS”), boron, sodium, chloride, bicarbonate, and pH into AEWSD’s surface water and groundwater supplies.

Thank you for your comment. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. Additionally, water quality concerns about reverse flow operations in the FKC are addressed with respect to AEWSD in the Draft EIR on pages 4.4-21 through 4.4-22.

Moreover, Article 9(c) of the CVC Operating Agreement, to which AEWSD is a party provides:

“Use of the Intertie for delivery of water from the Cross Valley Canal to the Friant-Kern Canal may result in adverse water quality impacts to Arvin-Edison. Due consideration for such impacts shall be negotiated between those Participants desiring to introduce water into the Friant-Kern Canal and Arvin-Edison; provided, however, no such consideration shall be due with respect to any water provided under existing contracts and renewals thereof between Rag Gulch, Kern-Tulare and the Fresno-Tulare Group and the United States for providing for deliveries from the California Delta or Rag Gulch or Kern-Tulare supplies delivered pursuant to federal approval.”

(Draft EIR, page 3-9.) Water delivered under the proposed Project would be the same water delivered under existing contracts and renewals subject to federal approval, for which “no such consideration shall be due” to AEWSD.

The commenter further states their NOP comment, dated November 4, 2020, was not included in the Draft EIR.

Thank you for your comment. As noted above, in Section 7.1, this comment letter was inadvertently omitted from the Draft EIR. The NOP comment makes reference to water quality data that has been collected by AEWSD however, the NOP comment did not provide such data, and comments regarding water quality concerns have been otherwise addressed in the FEIR.

B. Response to Comment 2-B

The commenter references an attached report from EKI.

Thank you for your comment. This comment and specific responses are provided below (Comment 2b).

C. Response to Comment 2-C

The commenter states the EIR must provide specific information about current and expected water quality in the CVC or the FKC, with or without the Project.

Thank you for your comment. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. As noted in the Draft EIR, “[t]he practice of occasionally introducing CVP water allocated under the CV contract and delivered through the Delta into the FKC is a long-standing practice that has historically occurred and is a baseline project condition.” (Draft EIR, page 4.4-21.) Such practice constitutes an existing baseline condition that would not change under the proposed Project, thus the Draft EIR determined no significant impact to water quality in its analysis of Impact 4.4-1. (Draft EIR, page 4.4-20 through 4.4-23.)

D. Response to Comment 2-D

The commenter states the EIR fails to resolve the Project’s conflict with California antidegradation policy.

Thank you for your comment. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. Global Response #4 addresses concerns regarding the federal and State antidegradation policies.

E. Response to Comment 2-E

The commenter states the EIR fails to address ongoing revisions to the Bureau of Reclamation’s (Reclamation) 2008 Water Quality Policy for the FKC and Madera Canal.

Thank you for your comment. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. The lead agency understands that Friant Water Authority has proposed a *Draft* Friant Water Quality Policy (Draft Policy). The Draft Policy is not final, nor is it presently in force and thus any analysis of environmental impacts as a result of the Draft Policy are speculative. As noted by Friant Water Authority in the Draft Policy when discussing “Additional Implementation Requirements,” Friant identifies “several programmatic challenges...that will continue to be evaluated and addressed” including the need to “address FWA’s authority to implement the Policy. FWA’s role is limited to complying with Federal and State laws and cannot adopt its own regulations.” Friant also states the need evaluate and address the programmatic challenge of “identify[ing] all existing programs and pump-ins and determine which are exempt from the Policy.” As the Draft Policy is not final but instead contingent on further evaluation and

addressing of issues, is not presently enforceable by Friant Water Authority, and has not been approved by Reclamation, any analysis of environmental impacts as a result of the Draft Policy would be speculative. However, no changes to the 2008 Water Quality Policy have been finalized, meaning the 2008 Water Quality Policy governs water quality related to the introduction of all water into the FKC. Actions taken pursuant to the proposed Project are and will be subject to all applicable laws and regulations, including Reclamation's current Water Quality Policy. (Draft EIR, page 4.4-23 ["The Project is and will remain subject to all applicable water quality standards and conditions."].)

F. Response to Comment 2-F

The commenter states the EIR inaccurately describes the 2006 CVC Operating Agreement with regard to Article 9(c). The Commenter states Article 9(c) recognizes that delivery of water from the CVC to the FKC can adversely impact AESWD and requires parties desiring to introduce CVC water into the FKC to provide AEWSW with "due consideration" for such impacts. The commenter contends the Project is not a renewal of existing water supply contracts with the United States.

Thank you for your comment. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. Water quality concerns as they relate to the introduction of water from the CVC to the FKC through reverse flow operation are addressed on pages 4.4-22 through 4.4-23 of the Draft EIR. The Draft EIR also quotes Article 9(c) of the 2006 CVC Operating Agreement, to which AEWSW is a party, as stating that "no consideration [for water quality impacts] shall be due with respect to any water provided under existing contracts and renewals thereof..." (Draft EIR, page 4.4-23.) The proposed Project, which consists of the conversion of CVP contracts and long-term renewal of conveyance contracts for CV Contractors, would continue delivery of the same water delivered under existing contracts and renewals which are subject to federal approval. (See Draft EIR, page 3-9.) Water delivered under the proposed Project would be the same water delivered under existing contracts and renewals subject to federal approval, for which "no such consideration shall be due" to AEWSW.

G. Response to Comment 2-G

The commenter states Provision 8 of the 2010 Intertie Operating Agreement further provides that "delivery of water into the FKC shall be consistent with the terms of Reclamation's policies, including but not limited to, water quality monitoring, measurement, and compliance with all applicable State and Federal laws and regulations" and the Draft EIR does not provide information to determine the Project's compliance with these requirements.

Thank you for your comment. Responses to water quality concerns are addressed in Global Response #1-4, contained within this chapter. The Draft EIR at Section 2.8.2 incorporates by reference the Friant-Kern Canal/Cross Valley Canal Intertie

Operating Agreement, entered into on April 23, 2010, by and among the FWA and the Kern County Water Agency (“KCWA”). Provision 8 of the 2010 Intertie Operating Agreement states that “delivery of water into the FKC shall be consistent with the terms of Reclamation’s policies, including but not limited to, water quality monitoring, measurement, and compliance with all applicable State and Federal laws and regulations.” As stated in the Draft EIR, “[t]he Project is and will remain subject to all applicable water quality standards and conditions.” (Draft EIR, page 3-9.)

Comment Letter 2b

21 May 2021

Jeevan Muhar, Engineer-Manager
Arvin-Edison Water Storage District
P.O. Box 175
Arvin, CA 93203

**Subject: Review and Comment on Cross Valley Contractors Conversion of
Water Supply Contracts and Renewal of Conveyance Contracts
Draft Environmental Impact Report
(EKI B60064.05)**

Dear Mr. Muhar:

EKI Environment & Water, Inc. (EKI) has conducted a focused review of the Lower Tule River Irrigation District's (LTRID's) *Conversion of Water Supply Contracts and Renewal of Conveyance Contracts Draft Environmental Impact Report* (DEIR) dated April 2021. The review was conducted on behalf of the Arvin-Edison Water Storage District (AEWSD). The purpose of this review was to identify and assess the appropriateness of the DEIR's treatment of water quality, particularly with respect to potential adverse impacts to the quality of water delivered to AEWSD by the Friant-Kern Canal (FKC).¹ Such impacts to the FKC will affect AEWSD's ability to comply with the Sustainable Groundwater Management Act (SGMA) and other water resource management objectives.

2b - A

COMMENTS

EKI has the following comments, organized by topic.

1. Proposed Project Does Not Comply with California Antidegradation Policy

The DEIR concludes² that the proposed Project is subject to the State of California antidegradation policy embodied in State Water Resources Control Board (SWRCB) Resolution No. 68-16 titled Statement of Policy with Respect to Maintaining High Quality of Waters in

2b - B

¹ The FKC is a 152-mile long canal that forms the backbone of the United States Department of Interior, Bureau of Reclamation (Reclamation) Central Valley Project (CVP) Friant Division. The FKC conveys CVP Friant Division water from the Division's primary storage reservoir, Millerton Lake (formed by Friant Dam on the San Joaquin River), southwards to CVP Friant Division Contractors within the Fresno, Kings, Kaweah, Tule and Kern County Subbasins, including to AEWSD.

² p. 4.4-14.

California. The DEIR states that SWRCB Resolution No. 68-16 “limits the discharge of pollutants into high-quality water in the State . . . [w]henver the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.”³

The DEIR acknowledges that the proposed Project does not conform to the requirements of SWRCB Resolution No. 68-16. Introduction of CVP water under Cross Valley (CV) contracts will impair water quality in the FKC. The DEIR finds “[t]he introduction of CVP water allocated under the CV contracts into the FKC could reduce the relative quality of the FKC water depending on if there is any comingling of the CVP water delivered through the Delta and CVP water delivered through Millerton Lake.”⁴ This condition clearly results in a significant impact, which the DEIR defines, in part, to be one that “[v]iolate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater.”⁵

2b - B
Cont

The DEIR attempts to dismiss this significant impact by observing that “[t]he practice of occasionally introducing CVP water allocated under the CV contract and delivered through the Delta into the FKC is a long-standing practice that has historically occurred and is a baseline project condition.”⁶ The DEIR adds that the Friant Water Authority’s (FWA’s) FKC operating procedures “expressly include the introduction of such water into the southern end of the FKC and moving it by ‘reverse flow’ north over a series of checks for delivery to contractors.”⁷

The DEIR ignores the fact that AEWSD and other Friant Division Contractors have previously voiced concerns regarding impairment of FKC water quality caused by importation of CVP water from the Sacramento/San Joaquin Delta (Delta). As explained in Comment 2 below, Reclamation and FWA are revising the Policy for Accepting Non-Project Water into the Friant-Kern and Madera Canals, dated 7 March 2008 (Water Quality Policy) to address those concerns.

2. Planned Revisions to Reclamation Water Quality Policy are Not Considered in DEIR

Certain revisions to the Water Quality Policy being negotiated by Reclamation and FWA arise from AEWSD and other Friant Division Contractors’ comments on FWA’s Friant-Kern Canal Reverse Flow Pump-Back Project. The Pump-Back Project entails constructing and operating three permanent pumping facilities on the FKC that would improve FWA’s ability to recirculate

2b - C

³ *Id.*

⁴ p. 4.4-21.

⁵ p. 4.4-19.

⁶ *Id.*

⁷ *Id.*

recaptured water released from Friant Dam to restore and maintain fish populations in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River. Recaptured water quality would be similar to that of Delta water under the proposed Project because recaptured water would be stored in San Luis Reservoir and conveyed through the California Aqueduct and CVC into the FKC.

AEWSD has repeatedly expressed their concerns about the adverse impacts that adding non-Millerton Lake water to the FKC have on the quality of AEWSD's Friant Division supplies. AEWSD desires to continue to utilize their Friant Division supplies, undegraded, to benefit their landowners and water management programs. Consequently, AEWSD, as a member of the FWA, insisted that the Pump-Back Project mitigate the significant impact that will result from introducing recaptured water into the FKC.

FWA responded by devising a mitigation strategy to "result in less-than-significant adverse agronomic, groundwater, and regulatory impacts within the boundaries of Friant Long-Term Contractors."⁸ The mitigation strategy recognizes that Friant Division Contractors downstream of locations where recaptured water is pumped into the FKC will likely receive lesser quality water and are thus entitled to additional surface water volumes to offset this significant impact. The mitigation strategy has been incorporated into revisions to the Water Quality Policy.⁹ The DEIR's finding that no mitigation measures are required is contrary to the terms of the Water Quality Policy being negotiated between Reclamation and FWA, of which LTRID, the Lead Agency for the proposed Project, and Kern-Tulare Water District, a responsible agency, are members.

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Cont

Further, the DEIR asserts that "delivery of CVP water into the FKC is not subject to the Water Quality Policy, as the policy only applies to non-project water." The Water Quality Policy has been revised to remove all references to Project and Non-Project water. New water quality thresholds, monitoring and mitigation requirements are focused on Millerton Lake versus Non-Millerton Lake water supplies. FWA states the reason for this change as follows:

Friant Contractors voluntarily proposed this change in order to implement comprehensive water quality management on the FKC. Friant Contractors are concerned with incremental changes in water quality from all sources of water introduced or diverted into the FKC, including groundwater pump-ins, surface water diversions and pump-ins, recaptured and recirculated San Joaquin River

⁸ FWA. 28 January 2019. *Friant-Kern Canal Reverse Pump-Back Project Draft Agreement on Approach to Water Quality Management Plan*. p. 2. Memorandum is included as Attachment A.

⁹ See draft United States Bureau of Reclamation South-Central California Area Office and Friant Water Authority Guidelines for Accepting Water into the Friant-Kern Canal, dated 22 April 2021. Draft guidelines are included as Attachment B.

Restoration Program Restoration Flows, and **water introduced at the FKC-Cross Valley Canal intertie via reverse-flow.**¹⁰ [emphasis added]

The DEIR does not assess the water quality impacts of the proposed Project against the new guidelines in the Water Quality Policy or indicate whether the proposed Project will meet the revised Water Quality Policy when it becomes effective.

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Cont

3. Environmental Setting is Not Adequately Described in DEIR

The DEIR does not adequately describe the affected surface water environment of the proposed Project. For example, the DEIR does not identify which, if any, of the projects listed in Comment 4 that allow the transfer, banking and exchange, and/or return of water into the FKC are part of the baseline project condition.

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An EIR must describe the environmental setting for the project, including the physical environmental conditions in the project area viewed from both a local and a regional perspective.¹¹ A clear and specific description of existing conditions is critical to the adequacy of an EIR.¹² Lead agencies have an affirmative obligation to obtain, analyze, and quantify any data necessary to provide decision-makers and the interested public with a full understanding of environmental conditions and potential impacts thereto.¹³

4. Cumulative Impacts of Importing Delta Water into FKC are Not Evaluated in DEIR

CEQA requires that an EIR evaluate cumulative impacts. The DEIR states “[c]umulative impacts are the project’s impacts combined with the impacts of other related past, present and reasonably foreseeable future projects.”¹⁴ The DEIR did not quantify the impairment of water quality that would result from the proposed Project nor consider reasonably foreseeable future projects in its analysis. The DEIR simply concludes:

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Implementation of the proposed Project would not result in any direct or indirect change in the quality or quantity of water delivered to the CV Contractors. The water supply source(s) would remain the same as would the means of

¹⁰ FWA. 20 April 2021. *Summary of Changes to FKC Water Quality Guidelines*. Revised 22 April 2021. pp. 1-2. Memorandum included as Attachment C.

¹¹ See 14 Cal Code Regs §15125.

¹² *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus*, 27 Cal. App. 4th 713 (1994).

¹³ See, e.g., *Cadiz Land Co. v. Rail Cycle*, 83 Cal. App. 4th 73, 94 (2000) (invalidating CEQA analysis for failure to investigate and quantify existing water conditions).

¹⁴ p. 3-19.

conveyance. Consequently, no cumulative impacts would occur to surface water resources of the CV Contractors in the Project Area.¹⁵

Reclamation has conditionally approved the following projects since 2008 that allow the transfer, banking and exchange, and/or return of water into the FKC:

1. Poso Creek Water Company Multiyear Banking and Transfer Programs
2. Westside Mutual Multiyear Banking and Transfer Programs
3. Cross Valley Contract renewals
4. Poso Creek Regional Water Management Group Environmental Assessment amendment to include South San Joaquin Municipal Utility District
5. Kings River Pump-in Programs (multiple approvals)
6. Kern River Pump-in Program
7. Pixley Water Bank
8. Shafter-Wasco Kimberlina Groundwater Recharge and Banking
9. Fresno Irrigation District Gould Canal to FKC Intertie Project
10. 5-year FKC Groundwater Pump-In Program
11. San Joaquin River Restoration Program Recapture and Recirculation EIR/EIS (pending)
12. Flying J Groundwater into Millerton Lake
13. Kaweah River Pump-in Programs (multiple approvals)
14. Tule River Pump-in Programs (multiple approvals)
15. Madera Irrigation District Storage and Conveyance of Non-Project Water in Friant Division facilities
16. Storage and Conveyance of Non-Project Water for Kern Tulare Water District and Lindsay-Strathmore Irrigation District
17. Delta Lands 770 Warren Act
18. Kern Tulare Water District and West Kern Water District Groundwater Banking Project
19. Madera Irrigation District long term banking and return in North Kern Water Storage District and Semitropic Water Storage District
20. Poso Creek Regional Water Management Group 25-year Program
21. Cawelo Water District Warren Act

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Cont

¹⁵ p. 4.4-27.

22. Rosedale Rio-Bravo and Delano Earlimart Irrigation District Banking Program
23. Kern Tulare Water District Return of Banked Water
24. North Kern Water Storage District Recovery and Transportation of Banked Water
25. Deer Creek Friant Kern Canal Water Bank
26. Pixley Groundwater Banking Project

These and other current and proposed projects along the FKC need to be considered in the DEIR cumulative impacts analysis. The DEIR does not specify which, if any, of the above projects were taken into account in the cumulative impacts analysis.

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Cont

CONCLUSIONS

AEWSD's primary water quality concerns about the proposed Project relate to its potential to discharge water into the FKC that is of lesser quality than Millerton Lake water, and has the potential of causing significant water quality impacts to AEWSD's surface water and groundwater supplies, water management programs, and the associated negative impacts on soils and crops in their districts among other things. Mitigation measures and compliance with the then current Water Quality Policy must be incorporated into the proposed Project to protect AEWSD's Friant Division supplies.

My curriculum vitae is attached as Attachment D. Please call or email if you have questions regarding EKI's comments.

Sincerely,

EKI Environment & Water, Inc.



Andrew Safford, PE
Vice President

ATTACHMENT A

Memorandum

DATE: JANUARY 28, 2019

TO: WATER QUALITY STEERING COMMITTEE

FROM: FRIANT WATER AUTHORITY

SUBJECT: FRIANT-KERN CANAL REVERSE PUMP-BACK PROJECT DRAFT AGREEMENT ON APPROACH TO WATER QUALITY MANAGEMENT PLAN

Some Friant Contractors have expressed concern that the Friant-Kern Canal Reverse Pump-Back Project (Pump-Back) would degrade water quality due to the importation of more Delta water with higher salinity concentration, and that the buildup of such salts (and other constituents) in groundwater basins could adversely affect beneficial uses. Increased loading from a variety of constituents during Pump-Back implementation is expected to affect the following:

1. Existing water management programs (e.g., water transfer and exchange agreements);
2. Operation and maintenance of conveyance infrastructure;
3. On-farm operations, including agricultural production yield and costs; and
4. Quantity and quality of recharge to groundwater, and thus groundwater levels and quality (i.e., accelerate accumulation of salts).

FWA intends to develop a solution to balance the relative values of water supply and water quality relative to use of the lower Friant-Kern Canal. The purpose and intent of the Pump-Back Water Quality Management Plan (WQMP) is to develop an accepted plan for management of water quality concerns that can be used as the basis for future planning by potential beneficiaries of pump-back supplies and recipients of blended supplies. The WQMP requires the following key principles to be satisfied:

1. As an opportunity to significantly improve the water supply reliability of the Friant Division, Pump-Back should be explored and implemented if feasible;
2. Pump-Back should be implemented in a manner that protects the sustainability of each Friant Contractor, as defined by the best available scientific understanding; and
3. Operations and funding requirements should be practical for implementation: operational costs and requirements should be transparent and easy to predict for facility users and operators.

As the Water Quality Steering Committee (WQSC) continues to provide input and direction to FWA and the public on developing water quality effects analyses and management measures for the WQMP, the following assurances will be agreed upon as a condition of proceeding to construction and operations:

1. The WQSC will continue to provide guidance on acceptable terms and criteria for an agreement, such that the appropriate data and information can be developed as the basis for the evaluation of short and long-term economic outcomes of using the pump-back facilities under various operating criteria.
2. The WQMP would apply equally to all discharges into the Friant-Kern Canal from Pump-Back. There will be no distinction between Project and non-Project water.
3. The WQMP will include a mitigation strategy based on current understanding of baseline and with-project conditions with a focus on long-term trends and agricultural viability.

4. The WQMP will include a mitigation strategy based on the outcomes of the effects analyses that will a) result in less-than-significant adverse agronomic, groundwater, and regulatory impacts within the boundaries of Friant Long-Term Contractors, or b) not otherwise interfere with the existing and ongoing programs of the Parties, and c) include, but not be limited to the following:
 - a. Comprehensive real-time monitoring program and coordination of Pump-Back operations, including:
 - i. Surface water quality, groundwater quality, soil sample, and plant tissue sample testing of the following constituents at locations and frequencies to be determined as acceptable to the Parties.
 - ii. Specify any additional monitoring and sample locations, and ancillary equipment as may be deemed to be necessary.
 - iii. Development and/or use of Friant-Kern Canal and Cross Valley Canal water quality blending models for weekly surface water quality forecasting.
 - iv. Prepare annual water balance studies, which will designate all sources of water and the use thereof within the affected project area.
 - v. Determination of impacts on each of the Parties by third party agronomist(s) by evaluating with and without-project conditions.
 - vi. Consider future development and/or use of numerical groundwater and flow transport model in coordination with Groundwater Sustainability Agencies to refine estimates for changes in groundwater quality over time.
 - b. Pump-Back operating criteria, including operating limits for water quality constituents of concerns, and quantities and flow rates at times that are acceptable, and consistent with existing and future regulatory requirements.
 - i. Identify possible periods of no Pump-Back
 - ii. Identify expected duration of Pump-Back operations and criteria for modifying operations if required by monitoring results
 - c. Agricultural management actions, including additional off-season reclamation leaching, and modified application of soil amendments, that affected parties may be required to take to limit or avoid adverse impacts, provided such actions are paid for by the Pump-Back program.
 - d. Irrigation system maintenance, including additional acid flush treatments, and coatings for metal components that affected parties may be required to take to limit or avoid adverse impacts, provided such actions are paid for by the Pump-Back program.
 - e. Financial mitigation due to potential agronomic impacts, such as reduction in crop yield and quality, and fallowing.
 - f. A method and procedure for determining amounts of funding to be collected and managed to cover costs for actions and effects described above.
5. Acceptable operating, governance, and communication responsibilities will be developed and agreed upon for administration within and among Friant Contractors, without any external (state or federal) regulatory oversight.

ATTACHMENT B

United States Bureau of Reclamation
South-Central California Area Office
and
Friant Water Authority

Guidelines for Accepting Water into the Friant-Kern Canal

These Guidelines describe the approval process, implementation procedures, and responsibilities of water contractors requesting permission from the U.S. Bureau of Reclamation (Reclamation) to introduce water into the Friant-Kern Canal (FKC). These Guidelines define water quality thresholds and the required mitigation associated with introduced water and corresponding water quality, as well as methodology and tools for monitoring and forecasting water quality in the FKC. The requirements contained herein are intended to ensure that water quality is protected for sustained domestic and agricultural use. These Guidelines are applicable to all existing Reclamation approvals that introduce water into the FKC (both those that reference “then current” language as well as certain approvals that do not specifically mention such “then current” language).

The Friant Water Authority (FWA) is authorized to implement the Guidelines per approval by Reclamation’s Contracting Officer under Article 30(a) of the October 5, 2020 renewed transferred works agreement between Reclamation and FWA¹ which directs FWA to operate the FKC in a manner that preserves quality of the water at the highest feasible level as determined by the Contracting Officer.

To support implementation of these Guidelines, Reclamation and FWA will appoint a Water Quality Advisory Committee composed of Friant Division long-term contractors (Friant Contractors) and other water contractors involved in either introducing water to or receiving water from the FKC. The Water Quality Advisory Committee established under these Guidelines will provide recommendations to FWA on operations and monitoring requirements of the FKC. The Water Quality Advisory Committee will operate under an established charter (see Attachment A).

These Guidelines are subject to review and modification by Reclamation and FWA. Reclamation and FWA reserve the right to change the water quality requirements for any water to be conveyed in the FKC if either of the following conditions occurs:

- A future regulatory cost or equivalent fee is imposed on Friant Contractors and a portion of such fee can reasonably be attributed to the incremental difference of water quality conditions in the FKC.
- There is a significant, regulatory change or scientifically based justification and three out of the following five Friant Contractors agree and work with the Water Quality Advisory Committee to recommend a change: Arvin-Edison Water Storage District, Shafter Wasco Irrigation District, Delano-Earlimart Irrigation District, South San Joaquin Municipal Utility District, or Kern-Tulare Water District.

Any proposed modification to these Guidelines, including single-year operational modifications recommended by the Water Quality Advisory Committee, will be noticed to all Friant Contractors for potential actions by the FWA Board of Directors.

The discharge of water into the FKC may not in any way limit the ability of either Reclamation or the FWA to operate and maintain the FKC for its intended purpose nor may it adversely impact existing

¹ Contract Renewal No. 8-07-20-X0356-X, *Agreement between the United States of America and Friant Water Authority to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the Friant Kern Canal and Associated Works.*

contracts or any other agreements. The discharge of water into the FKC will be permissible only when there is capacity in the system as determined by FWA and/or Reclamation.

The water contractor(s) introducing water into the FKC, or “Contributor,” will be responsible for securing all other requisite Federal, State or local permits.

A. Authorization

These Guidelines apply to all water introduced or diverted into the FKC including but not limited to:

- Releases from Millerton Lake to the headworks of the FKC
- Groundwater pump-ins
- Surface water diversions and pump-ins
- Recaptured and recirculated Restoration Flows
- Water introduced at the FKC-Cross Valley Canal (CVC) intertie and delivered via reverse flow on the FKC.

The Warren Act (Act of February 21, 1911, ch. 141, 36 Stat. 925), as supplemented by Section 305 of Public Law 102-250, authorizes Reclamation to contract for the carriage and storage of non-Project water when excess capacity is available in Federal water facilities.

Furthermore, individual Section 9(d) repayment contracts for the Central Valley Project Friant Division issued by Reclamation state, “the Secretary intends through coordination, cooperation, and partnerships to pursue measures to improve water supply, water quality, and reliability of the Project for all Project purposes” (15th Explanatory Recital) and stipulates that water quality should be maintained “at the highest level possible...” (Section 17(a)). Under the 9(d) repayment contracts, authorization is also provided to coordinate with contractors and implement other partnerships to ensure water quality and avoid interference of contractual water entitlements of any other contractor (Article 18.(c)(2), Article 20.(b)(1), Article 20 (b)(2)).

The terms of these Guidelines are also based on the requirements of the Clean Water Act (33 U.S.C. 1251 et seq.), the Endangered Species Act of 1973 (P.L. 93-205), the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.), the Reclamation Act of 1902 (June 17, 1902 as amended), and the Safe Drinking Water Act of 1974 (P.L. 93-523, amended 1986) and Title XXIV of the Reclamation Projects Authorization and Adjustments Act of 1992 (P.L. 102-575, 106 Stat 4600).

B. General Requirements for Discharge of Water Into the Friant-Kern Canal

1. Contract or Approval Requirements

A water contractor wishing to discharge water into the FKC, or “Contributor,” must obtain a contract or other applicable approval from Reclamation. The contract or approval must be negotiated with Reclamation's South-Central California Area Office (SCCAO) in Fresno or such other office as Reclamation may designate..

2. Facility Licensing

Each discharge facility must be licensed by Reclamation in consultation with FWA. The license for erection and maintenance of structures may be negotiated with the SCCAO or such other office as Reclamation may designate.

3. Prohibition When the Canal is Empty

Water may not be conveyed in the FKC during periods when the canal is de-watered for maintenance unless otherwise approved by FWA.

C. Water Quality Monitoring and Reporting Requirements

1. General Discharge Approval Requirements

Each source of water discharged into the FKC must be correctly sampled, completely analyzed, and based

on a recommendation from FWA, be approved by Reclamation prior to introduction into the FKC. The Contributor must pay the cost of collection and analyses of the water required under these Guidelines.² Other costs associated with the implementation of these Guidelines are described in Section E below.

2. Water Quality Monitoring, Sampling, and Analyses

All waters discharged into the FKC must be tested annually for the complete list of constituents of concern and bacterial organisms listed in Table 1. The analytical laboratory must be approved by Reclamation (Table 2). Water quality analytical results must be reported to the Contracting Officer and FWA for review.

If EC concentrations of the discharged water exceed half of the constituent threshold defined in Table 4, 500 $\mu\text{S}/\text{cm}$ and 250 $\mu\text{S}/\text{cm}$, respective to the water quality management period, discharged water will be tested weekly until water quality samples show stable concentrations and then monthly subsequently.

If the water quality analytical results show exceedance of any other constituent of concern, Reclamation and FWA can prohibit the introduction of the discharge water or impose additional requirements including but not limited to monitoring of the discharge source and downstream in-prism quality at the cost of the Contributor.

FWA will cause to be implemented continuous, real-time monitoring of in-prism water quality conditions in the FKC. Conductivity meters (or sondes) will measure and record real-time in-prism electrical conductivity (EC), measured as microsiemens per centimeter ($\mu\text{S}/\text{cm}$), every 15 minutes at the FKC check structures and corresponding mileposts shown in Table 3. Collected EC data will be uploaded to FWA's Intellisite Operation System (IOS) in real-time. These continuous, in situ measurements of electrical conductivity will provide real-time data on incremental water quality changes and mixing in the canal and will assist in water quality threshold management.

Additional water quality sampling and analysis will be performed during specific FKC operations. FWA will cause to be measured electrical conductivity using hand-held conductivity meters as needed, such as during:

- servicing of real-time monitoring equipment;
- unexpected real-time monitoring equipment outages;
- confirmation of real-time monitoring equipment measurements; and,
- targeted in-prism measurements.

During reverse-flow, pump-back operations, weekly water quality sampling will be performed within the CVC near the FKC/CVC Intertie. Grab samples will be collected by the FWA and provided to a Reclamation approved, third-party laboratory for testing. See Table 2 for a full list of approved, third-party laboratories. At a minimum, grab samples collected during reverse-flow pump-back operations will be analyzed for the following agronomic constituents of concern:

- Bicarbonate
- Boron
- Calcium
- Chloride
- Electrical Conductivity
- Iron
- Magnesium
- Manganese
- Nitrate

² Reclamation will pay for the collection and analyses of quarterly baseline samples collected at Friant Dam and Lake Woolomes

- pH
- Sodium
- Total Dissolved Solids

During initiation of pump-back activities and/or if it is anticipated that operations within the CVC will significantly change mixed water quality conditions (i.e. influence from California Aqueduct, Kern River, Kern Fan), samples will be tested for above constituents and constituents required by Title 22 standards.

The Water Quality Advisory Committee will evaluate water quality monitoring, sampling, and analysis requirements on a regular basis and provide recommendations for modification of the described requirements.

D. Water Quality Forecasting, Communications, and Management

1. Friant-Kern Canal Water Quality Model

Water quality monitoring and collection of water quality data will be evaluated using the FKC Water Quality Model, a volumetric mass-balance model of the entire FKC. The FKC Water Quality Model will serve as a water quality forecast tool to assist Friant Contractors in making real-time operation decisions. The calibration and operation of this model will require compilation of surface water quality data collected, as described above, as well as forecasts of water orders.

2. Water quality reporting and communications

IOS will report real-time, continuous FKC in-prism electrical conductivity measurements. In addition, FWA will cause to be provided a weekly summary report to Friant Contractors on:

- FKC current and forecasted operations;
- FKC current in-prism monitoring and forecasted water quality conditions; and,
- Pertinent pump-in programs' operations and water quality conditions.

3. Managing Water Quality in the Friant Division

FKC in prism water quality will be managed per the following thresholds. If the below thresholds are exceeded, systematic cessation of pump-in or pump-back operations will occur, prioritizing the source of greatest concentration until water quality conditions return to the defined threshold.

- Title 22.** The Domestic Water Quality and Monitoring Regulations specified by the State of California Health and Safety Code (Sections 4010-4037), and Administrative Code (Sections 64401 et seq.), as amended. In-order to prevent potential impacts to municipal and industrial (M&I) users downstream of pump-in locations, in prism Title 22 constituent concentrations will not exceed half the MCL as defined in Table 1.
- Water quality thresholds defined in Table 4. Water quality thresholds are representative of constituent thresholds of sensitive crops; leaching requirements; and crop thresholds for regulated deficit irrigation practices that occur during almond hull split from July 1 through August 31; and flexible thresholds in the second half of the contract year, from March 1 through June 30, depending on observed water quality.
 - Table 4 presents alternative water quality thresholds for Period 3 (September 1 – February 28) that are dependent on the measured water quality during Period 1 (March 1 – June 30). If the measured average chloride concentration for Period 1 exceeds 70 mg/L, the chloride threshold remains at 102 mg/L for Period 3a. If the measured average chloride concentrations for Period 1 are less than or equal to 70 milligrams per liter (mg/L), the allowable chloride concentration increases from 102 mg/L to 123 mg/L for Period 3b
 - It is estimated that an average of one week is required for in-prism water quality to turnover. Prior to the onset of the defined hull split period requirements (July 1), FWA will evaluate current canal operations and water quality conditions to determine if this one-week period should be adjusted.

Furthermore, pump-in or pump-back programs will not be introduced to the FKC during the Friant Division uncontrolled season as declared by Reclamation unless the program can assist in alleviating an FKC prorate or is below the determined baseline negotiated by Friant Contractors and, therefore, does not require mitigation.

If water quality thresholds are exceeded or operations in the FKC need to change per Guidelines requirements, Reclamation, in consultation with FWA, will direct the Contributor to stop the discharge of water from this source into the FKC.

4. Water Quality Mitigation

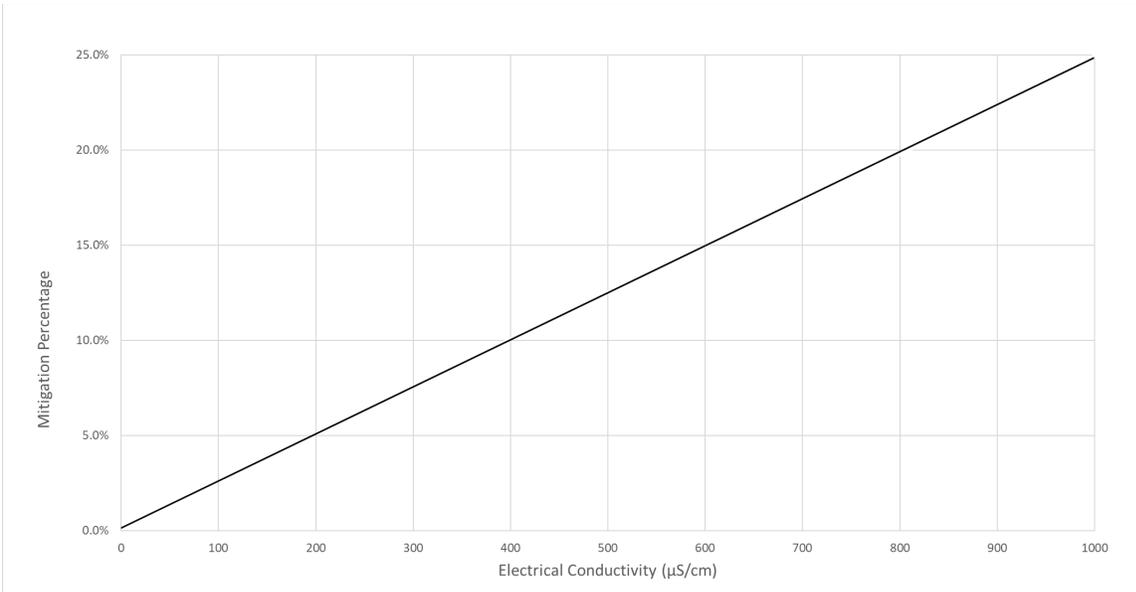
Mitigation for impacted water quality is quantified through use of the Water Quality Mitigation Ledger (Ledger). The Ledger tracks and accounts for all inflows into and diversions from the FKC in order to determine appropriate mitigation for impacted water quality (attributable to the introduced water [or “Put”] and the corresponding distribution thereof [or “Take”]). The volume of additional surface water needed for mitigation, expressed as a percentage of the introduced water, or Put, is determined using an established mitigation rating curve. The mitigation rating curve is based on (1) constituent concentrations, and (2) agronomic principles that focus on leaching requirements in order to prevent constituent accumulation in the rootzone and resulting impacts on crops. This approach aims to balance concerns related to long-term groundwater quality with a multi-layered assessment of agronomic impacts as a durable solution. The process for developing the agronomic impacts evaluation and mitigation rating curve can be found in *Attachment A – Agronomic Impacts and Mitigation*.

The Ledger quantifies mitigation for Friant Contractors that have an expectation to receive water consistent with quality conditions of Millerton Lake. Specifically, mitigation applies to the Take of Friant Division Class 1, Class 2, Recovered Water Account (RWA [Paragraph 16b]), and Unreleased Restoration Flows supplies. Friant Contractors and/or other water contractors, including but not limited to third parties, whose supplies are not delivered to the headworks of the FKC are not eligible to receive mitigation.

Mitigation is based on the water quality concentration of inflows above the established baseline. The mitigation rating curve is used to determine the volumetric percentage of introduced water, or Put, that each contractor that introduces water into the FKC, or “Contributor,” owes. The mitigation rating curve (Figure 1) was developed using agronomic leaching factors described in Attachment A. Existing FKC inlet drains are exempt from providing mitigation.

The established baseline is based on assumptions of current, minimum leaching practices by water users, or growers, in the region. Consistent with good agricultural practices, it is assumed that growers are currently applying at least a 5 percent leaching fraction. Under the mitigation rating curve, this corresponds to an approximate EC of 200 $\mu\text{S}/\text{cm}$. It is assumed that growers are already managing the effects of applied water quality conditions up to 200 $\mu\text{S}/\text{cm}$ of EC, and mitigation is only required for water quality conditions with incremental EC that exceed the baseline EC threshold of 200 $\mu\text{S}/\text{cm}$.

Mitigation volumes for each Put are distributed to each Friant Contractor receiving an eligible Take, or “Taker,” downstream based on the volumetric proportion of the Take on a weekly basis. Mitigation occurs in real time by the Contributor and offsets a like volume of each Taker’s supply at the end of a reporting period. Additional mitigation is not required to account for the water quality conditions of the mitigation volumes. Water quality conditions and flows are tracked daily. The ledger and required mitigation volumes are balanced weekly and reported and transferred monthly.



Key:
 $\mu\text{S/cm} = \text{microsiemens per centimeter}$ ($1 \mu\text{S/cm} = 1 \mu\text{mhos/cm} = 1/1,000 \text{ dS/m}$)

Figure 1. Proposed Mitigation Rating Curve based on Boron Sensitivity and Normalized to Electrical Conductivity

E. Implementation Responsibilities and Costs

FWA will be responsible for the following actions:

- Maintain and calibrate conductivity meters on a bi-weekly basis
- Perform water quality sampling during pump-in operations
- Coordinate laboratory water quality testing
- Coordinate with Friant Contractors on water quality data monitoring and analysis
- Manage water quality and operations database
- Perform weekly water quality reporting and forecasting using FKC Water Quality Model
- Perform weekly analysis to determine mitigation and distribution to respective Friant Contractors using the FKC Water Quality Mitigation Ledger
- Coordinate with Reclamation's SCCAO on water quality reporting, mitigation, and contractual requirements
- Coordinate and facilitate the work of Water Quality Advisory Committee

Costs for implementation and administration of these Guidelines will initially be paid out of the FWA OM&R budget, and subsequently will be reimbursed by Contributors. The Contributor will pay a dollar per acre-foot (\$/acre-foot) fee (Water Quality Fee) for introduced water, that will be credited back to the FWA OM&R budget. The Water Quality Fee will be adopted by the FWA Board of Directors and will be based on an estimate of total annual costs divided by average annual deliveries of pump-in programs into the FKC. The Water Quality Fee will be applied to all introduced water even if it is not required as mitigation under the Guidelines.

Based on estimated total annual costs which include amortization of capital costs for water quality testing equipment, laboratory testing costs and FWA staff and consultant costs and considering estimated total deliveries for pump-in programs to the FKC, the initial Water Quality Fee is \$2.29 per acre foot and will be escalated 3% per FWA fiscal year. Annual costs and deliveries will be reassessed every year and compared to estimates provided in Attachment B to determine if any adjustments are required to the Water Quality Fee.

Definitions

Contributor

Water contractor that introduces water into the Friant-Kern Canal.

Project

The Friant Division of the Central Valley Project, specifically the Friant-Kern Canal

Maximum Contaminant Level

Usually reported in milligrams per liter (parts per million) or micrograms per liter (parts per billion).

Title 22

The Domestic Water Quality and Monitoring Regulations specified by the State of California Health and Safety Code (Sections 4010-4037), and Administrative Code (Sections 64401 et seq.), as amended.

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Table 1. Title 22 California Drinking Water Standards

Table 2. List of Labs Approved by Reclamation

Table 3. Check Structure Locations for Real-Time Measurements of Electrical Conductivity

Table 4. Friant-Kern Canal In-Prism Water Quality Thresholds

Attachment A. Water Quality Advisory Committee Charter

Attachment B. FKC Water Quality Guidelines Cost Allocation

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Table 1. Water Quality Constituents

CONSTITUENT OR PARAMETER	Units	Recommended Method	California OHS Maximum Contaminant Level		CAS Registry Number
Primary Constituents (CCR§ 64431)					
Aluminum	µg/L	EPA200.7	1,000		7429-90-5
Antimony	µg/L	EPA200.8	6		7440-36-0
Arsenic	µg/L	EPA200.8	10	16	7440-38-2
Asbestos	MFL > 10µm	EPA 100.2	7		1332-21-4
Barium	µg/L	EPA 200.7	1,000		7440-39-3
Beryllium	µg/L	EPA200.7	4		7440-41-7
Cadmium	µg/L	EPA200.7	5		7440-43-9
Chromium	µg/L	EPA200.7	50		7440-47-3
Cyanide	µg/L	EPA335.4	150		57-12-5
Fluoride	mg/L	EPA 300.1	2		16984-48-8
Mercury (inorganic)	µg/L	EPA245.1	2		7439-97-6
Nickel	µg/L	EPA200.7	100		7440-02-0
Nitrate (as N03)	mg/L	EPA300.1	45		7727-37-9
Total Nitrate+ Nitrite (as Nitrogen)	mg/L	EPA353.2	10		
Nitrite (as Nitrogen)	mg/L	EPA 300.1			14797-65-0
Selenium	µg/L	EPA200.8	50		7782-49-2
Thallium	µg/L	EPA200.8	2		7440-28-0
Secondary Constituents (CCR§ 64449)					
Aluminum	µg/L	EPA200.7	200	6	7429-90-5
Chloride	mg/L	EPA300.1	250/500/600	7	16887-00-6
Color	units	SM 2120 B	15	6	
Copper	µg/L	EPA200.7	1,000	6	7440-50-8
Foaming agents (MBAS)	mg/L	SM 5540C	0.5	6	
Iron	µg/L	EPA200.7	300	6	7439-89-6
Manganese	µg/L	EPA200.7	50	6	7439-96-5
Methyl-tert-butyl ether (MtBE)	µg/L	EPA 524.2	5	6	1634-04-4
Odor - Threshold	threshold units	SM 2150 B	3	6	
Silver	µg/L	EPA200.7	100	6	7440-22-4
Specific conductance (EC)	µSiem	SM 2510 B	900/1600/2200	7	
Sulfate	mg/L	EPA300.1	250/500/600	7	14808-79-8
Thiobencarb	µg/L	EPA525.2		6	28249-77-6
Total dissolved solids (TDS)	mg/L	SM 2540 C	500/1000/1500	7	
Turbidity	NTU	EPA180.1	5	6	
Zinc	mg/L	EPA200.7	5	6	7440-66-6

Table 1. Water Quality Constituents

CONSTITUENT OR PARAMETER	Units	Recommended Method	California DHS Maximum Contaminant Level		GAS Registry Number
Other required analyses (CCR§ 64449 (b)(2); CCR § 64670)					
Bicarbonate	mg/L	SM 2320B		8	
Calcium	mg/L	SM3111B		8,12	7440-70-2
Carbonate	mg/L	SM 2320B		8	
Copper	mg/L	EPA200.7	1.3	14	7440-50-8
Hardness	mg/L	SM 2340 B		8	
Hydroxide alkalinity	mg/L	SM 2320B		8,12	
Lead	mg/L	EPA200.8	0.015	14	7439-92-1
Magnesium	mg/L	EPA200.7		8	7439-95-4
Orthophosphate	mg/L	EPA365.1		12	
pH	units	EPA150.1		8,12	
Silica	mg/L	EPA200.7		12	
Sodium	mg/L	EPA200.7		8	7440-23-5
Temperature	degrees C	SM 2550		12	
Radiochemistry (CCR§ 64442)					
Radioactivity, Gross Alpha	pCi/L	SM 7110C	15	3	
Microbiology					
Cryptosporidium	org/liter		No MCL, measure for presence (surface water only)		
Fecal Coliform	MPN/100ml		No MCL, measure for presence (surface water only)		
Giardia	org/liter		No MCL, measure for presence (surface water only)		
Total Coliform bacteria	MPN/100ml		No MCL, measure for presence (surface water only)		
Organic Constituents (CCR § 64444)					
EPA 504.1 method					
Dibromochloropropane (DBCP)	µg/L	EPA504.1	0.2	4	96-12-8
Ethylene dibromide (EDB)	µg/L	EPA504.1	0.05	4	206-93-4
EPA505					
Chlordane	µg/L	EPA505	0.1	4	57-74-9
Endrin	µg/L	EPA505	2	4	72-20-8
Heptachlor	µg/L	EPA505	0.01	4	76-44-8
Heptachlor epoxide	µg/L	EPA505	0.01	4	1024-57-3
Hexachlorobenzene	µg/L	EPA505		4	118-74-1
Hexachlorocyclopentadiene	µg/L	EPA505	50	4	77-47-4
Lindane (gamma-BHC)	µg/L	EPA505	0.2	4	58-89-9
Methoxychlor	µg/L	EPA505	30	4	72-43-5
Polychlorinated biphenyls	µg/L	EPA505	0.5	4	1336-36-3
Toxaphene	µg/L	EPA505	3	4	8001-35-2
EPA 508 Method					
Alachlor	µg/L	EPA508.1	2	4	15972-60-8
Atrazine	µg/L	EPA508.1		4	1912-24-9
Simazine	µg/L	EPA508.1	4	4	122-34-9

Table 1. Water Quality Constituents

CONSTITUENT OR PARAMETER	Units	Recommended Method	California OHS Maximum Contaminant Level		CAS Registry Number
EPA 515.3 Method					
Bentazon	µg/L	EPA 515	18	4	25057-89-0
2,4-D	µg/L	EPA515.1-4	70	4	94-75-7
Dalapon	µg/L	EPA515.1-4	200	4	75-99-0
Dinoseb	µg/L	EPA515.1-4	7	4	88-85-7
Pentachlorophenol	µg/L	EPA515.1-4		4	87-86-5
Picloram	µg/L	EPA 515.1-4	500	4	1916-02-1
2,4,5-TP (Silvex)	µg/L	EPA515.1-4	50	4	93-72-1
EPA 524.2 Method (Volatile Organic Chemicals)					
Benzene	µg/L	EPA524.2		4	71-43-2
Carbon tetrachloride	µg/L	EPA 524.2	0.5	4	56-23-5
1,2-Dibromomethane	µg/L	EPA 524.2	0.05		106-93-4
1,2-Dichlorobenzene	µg/L	EPA524.2	600	4	95-50-1
1,4-Dichlorobenzene	µg/L	EPA524.2	5	4	106-46-7
1,1-Dichloroethane	µg/L	EPA 524.2	5	4	75-34-3
1,2-Dichloroethane	µg/L	EPA524.2	0.5	4	107-06-2
1,1-Dichloroethylene	µg/L	EPA 524.2	6	4	75-35-4
cis-1,2-Dichloroethylene	µg/L	EPA524.2	6	4	156-59-2
trans-1,2-Dichloroethylene	µg/L	EPA524.2	10	4	156-60-5
Dichloromethane	µg/L	EPA524.2	5	4	75-09-2
1,2-Dichloropropane	µg/L	EPA524.2	5	4	78-87-5
1,3-Dichloropropene	µg/L	EPA524.2	0.5	4	542-75-6
Ethylbenzene	µg/L	EPA524.2	300	4	100-41-4
Methyl-tert-butyl ether (MtBE)	µg/L	EPA524.2	13	4	1634-04-4
Monochlorobenzene	µg/L	EPA524.2	70	4	108-90-7
Styrene	µg/L	EPA524.2	100	4	100-42-5
1,1,2,2-Tetrachloroethane	µg/L	EPA524.2		4	79-34-5
Tetrachloroethylene (PCE)	µg/L	EPA524.2	5	4	127-18-4
Toluene	µg/L	EPA524.2	150	4	108-88-3
1,2,4-Trichlorobenzene	µg/L	EPA 524.2	5	4	120-82-1
1,1,1-Trichloroethane	µg/L	EPA524.2	200	4	71-55-6
1,1,2-Trichloroethane	µg/L	EPA524.2	5	4	79-00-5
Trichloroethylene (TCE)	µg/L	EPA 524.2	5	4	79-01-6
Trichlorofluoromethane	µg/L	EPA 524.2	150	4	75-69-4
1,1,2-Trichloro-1,2,2-trifluoroethane	µg/L	EPA524.2	1,200	4	76-13-1
Total Trihalomethanes	ug/L	EPA524.2	80	10	
Vinyl chloride	µg/L	EPA 524.2	0.5	4	75-01-4
Xylene(s)	µg/L	EPA 524.2	1,750	4	1330-20-7
EPA 525.2 Method					
Benzo(a)pyrene	µg/L	EPA 525.2	0.2	4	50--32-8
Di(2-ethylhexyl)adipate	µg/L	EPA525.2	400	4	103-23-1
Di(2-ethylhexyl)phthalate	µg/L	EPA 525.2	4	4	117-81-7
Molinate	µg/L	EPA 525.2	20	4	2212-67-1
Thiobencarb	µg/L	EPA 525.2	70	4	28249-77-6
EPA 531.1 Method					
Carbofuran	µg/L	EPA531.1-2	18	4	1563-66-2
Oxamyl	µg/L	EPA531.1-2	50	4	23135-22-0

Table 1. Water Quality Constituents

CONSTITUENT OR PARAMETER	Units	Recommended Method	California OHS Maximum Contaminant Level		CAS Registry Number
EPA 547 Method					
Glyphosate	µg/L	EPA547	700	4	1071-83-6
EPA 548.1 Method					
Endothal	µg/L	EPA 548.1	100	4	145-73-3
EPA 549.2 Method					
Diquat	µg/L	EPA549.2	20	4	85-00-7
EPA 613 Method					
2,3,7,8-TCDD (Dioxin)	µg/L	EPA 1613	0.00003	4	1746-01-6

Source Data:

Adapted from Marshack, Jon B. August 2003. A Compilation of Water Quality Goals. Prepared for the California Environmental Protection Agency, Regional Water Quality Control Board.

DRAFT

Table 1. Unregulated Chemicals (CCR § 64450)

CONSTITUENT OR PARAMETER	Units	Recommended Method	California Department of Health Services		CAS Registry Number	
			Notification Level	Response Level		
Boron	mg/L	EPA 200.7		9, 17	10	7440-42-8
n-Butylbenzene	µg/L	EPA 524.2	260	17	2,600	104-51-8
sec-Butylbenzene	µg/L	EPA 524.2	260	17	2,600	135-98-8
tert-Butylbenzene	µg/L	EPA 524.2	260	17	2,600	98-06-6
Carbon disulfide	µg/L		160	17	1,600	
Chlorate	µg/L	EPA 300.1	0.8	17	8	
2-Chlorotoluene	µg/L	EPA 524.2	140	17	1,400	95-49-8
4-Chlorotoluene	µg/L	EPA 524.2	140	17	1,400	106-43-4
Dichlorofluoromethane (Freon 12)	µg/L	EPA 524.2	1,000	9,17	10,000	75-43-4
1,4-Dioxane	µg/L	SM 8270	3	17	300	123-91-1
Ethylene glycol	µg/L	SM 8015	1,400	17	14,000	107-21-1
Formaldehyde	µg/L	SM 6252	100	17	1,000	50-00-0
n-Propylbenzene	µg/L		260	17	2,600	
HMX	µg/L	SM 8330	350	17	3,500	2691-41-0
Isopropylbenzene	µg/L		770	17	7,700	
Manganese	mg/L			17	5	
Methyl isobutyl ketone	µg/L		120	17	1,200	
Napthalene	µg/L	EPA 524.2	17	17	170	91-20-3
n-nitrosodiethylamine (NDEA)	µg/L	1625	0.01	17	0.1	
n-nitrosodimethylamine (NOMA)	µg/L	1625	0.01	17	0.2	
n-nitroso-n-propylamine (NDPA)	µg/L	1625	0.01	17	0.5	
Perchlorate	µg/L	EPA 314	6	9, 17	60	13477-36-6
Propachlor	µg/L	EPA 507 or 525	90	17	900	1918-16-7
p-Isopropyltoluene	µg/L	EPA 524.2	770	17	7,700	99-87-6
ROX	µg/L	SM 8330	0.30	17	30	121-82-4
tert-Butyl alcohol (ethanol)	µg/L	EPA 524.2	12	9,17	1,200	75-65-0
1,2,3-Trichloropropane (TCP)	ug/L	EPA 524.2	0.005	9,17	0.5	96-18-4
1,2,4-Trimethylbenzene	µg/L	EPA 524.2	330	17	3,300	95-63-6
1,3,5-Trimethylbenzene	µg/L	EPA 524.2	330	17	3,300	95-63-6
2,4,6-Trinitrotoluene (TND)	µg/L	SM 8330		17	100	
Vanadium	mg/L	EPA286.1	0.05	9,17	0.5	7440-62-2

Revised: 05/17/2007

Notes for Table 1

Title 22. California Code of Regulations, California Safe Drinking Water Act and Related Laws and Regulations. February 2007.
<http://www.dhs.ca.gov/ps/ddwem/publications/lawbook/PDFs/dwregulations-02-06--07.pdf>

- [1] Table 64431-A. Maximum Contaminant Levels, Inorganic Chemicals
- [2] Table 64432-A. Detection Limits for Purpose of Reporting (DLRs) for Regulated Inorganic Chemicals
- [3] Table 644442. Radionuclide Maximum contaminant Levels (MCLs) and Detection Levels for Reporting (DLRs)
- [4] Table 64444-A. Maximum Contaminant Levels Organic Chemicals
- [5] Table 64445.1-A. Detection Limits for Reporting (DLRs) for Regulated Organic Chemicals
- [6] Table 64449-A. Secondary Maximum Contaminant Levels "Consumer Acceptance Levels"
- [7] Table 64449-8. Secondary Maximum Contaminant Levels "Consumer Acceptance Levels"
- [8] § 64449(b)(2)
- [9] Table 64450. Unregulated Chemicals
- [10J] Appendix 64481-A. Typical Origins of Contaminants with Primary MCLs
- [11] Table 64533-A. Maximum Contaminant Levels and Detection Limits for Reporting Disinfection Byproducts
- [12] § 64670.(c)
- (13) Table 64678-A. DLRs for Lead and Copper
- [14] § 64678 (d)
- [15] § 64678 (e)
- [16] New Federal standard as of 1/23/2006
- (17) Dept Health Services Drinkig Water Notification Levels (June 2006)

RECLAMATION

Managing Water in the Test

Table 2. Approved Laboratory List for the Mid-Pacific Region Environmental Monitoring Branch (MP-157)

Basic Laboratory	Address	2218 Railroad Avenue Redding, CA 96001 USA
	Contact	Nathan Hawley, Melissa Hawley, Rick Jensen
	P/F	(530) 243-7234 / (530) 243-7494
	Email	nhawley@basiclab.com (QAO), mhawley@basiclab.com (PM), jcady@basiclab.com (quotes), poilar@basiclab.com (sample custody), khawley@basiclab.com (sample custody)
	CC Info	nhawley@basiclab.com, jcady@basiclab.com (sample custody)
	Methods	Approved only for inorganic parameters (metals, general chemistry)
BioVir Analytical Laboratories	Address	685 Stone Road Unit 6 Benicia, CA 94510 USA
	Contact	Rick Danielson, Lab Director
	P/F	(707) 747-5906 / (707) 747-1751
	Email	red(a)biovir.com, csiralbiovir.com, lb(a)biovir.com, OAO Jim Truscott irt(a)biovir.com
	Methods	Approved for all biological and pathogenic parameters
Block Environmental Services	Address	2451 Estand Way Pleasant Hill, CA 94523 USA
	Contact	David Block
	P/F	(925) 682-7200 / (925) 686-0399
	Email	dblock(a)blockenviron.com
	Methods	Approved for Toxicity Testini!
California Laboratory Services	Address	3249 Fitzgerald Road Rancho Cordova, CA 95742
	Contact	Raymond Oslowski
	P/F	(916) 638-7301 / (916) 638-4510
	Email	rayo(a)californialab.com
	Methods	Approved for Chromium VI
Caltest Analytical Laboratory	Address	1885 North Kelly Road Napa, CA 94558
	Contact	Bill Svoboda, Project Manager x29
	P/F	(707) 258-4000 / (707) 226-1001
	Email	bsvoboda(a)caltestlab.com
	Methods	Approved (or all inorganic parameters and biological parameters)
Columbia Environmental Resource Center	Address	4200 New Haven Road Columbia, MO 65201 USA
	Contact	Tom May, Research Chemist
	P/F	(573) 876-1858 / (573) 876-1896
	Email	tmay(a)usgs.gov
	Methods	Approved (or mercury in biological tissue)
Data Chem Laboratories	Address	960 West LeVo Drive Salt Lake City, UT 84123-2547 USA
	Contact	Bob DiRienzo, Kevin Griffiths - Project Manager, Rand Potter - Project Manager, asbestos
	P/F	(801) 266-7700 / (801) 268-9992
	Email	griffiths@datachem.com, Potter@datachem.com Invoicing: (Justin) pate@datachem.com
	Methods	Approved for asbestos, metals, organochlorine pesticides and PCBs in solids
Dept. of Fish & Game-WPCL	Address	2005 Nimbus Road Rancho Cordova, CA 95670 USA
	Contact	David S. Crane
	P/F	(916) 358-2858 / (916) 985-4301
	Email	dcrane(a)ospr.dfg.ca.gov
	Methods	Approved only (or metals analysis in tissue).
Frontier Geosciences	Address	414 Pontius North Seattle, WA 98109 USA
	Contact	Shelly Fank - QA Officer, Matt Gomes - Project Manager
	P/F	(206) 622-6960 / (206) 622-6870
	Email	shellyf(a)frontiergeosciences.com, matto(n)frontiergeosciences.com
	Methods	in low level metals analysis.

Fruit Growers Laboratory	A!!!!rm	853 Corporation Street Santa Paula, CA 93060 USA
	Contact	David Terz, QA Director
	P/F	(805) 392-2024 / (805) 525-4172
	Email	davidt@fglinc.com
	Methods	Approved for all inorganic and organic parameters in drinking water.
Montgomery Watson/Harza Laboratories	Address	750 Royal Oaks Drive Ste. 100 Monrovia, CA 91016 USA
	Contact	Allen Glover (project manager), Bradley Cahoon (quotes)
	P/F	(916) 374-8030, 916-996-5929 (AG-cell) / (916) 374-8061
	Email	Allen.Glover@us.mwhglobal.com, Bradley.Cahoon@us.mwhglobal.com
	CC Info	cc. Sam on all communications to Allen. Samer.Momani@us.mwhglobal.com
	Methods	Approved for all inorganic and organic parameters in drinking water
Olson Biochemistry Laboratories	A!!!!rm	SDSU: Box 2170, ACS Rm. 133 Brookings, SD 57007 USA
	Contact	Nancy Thiex, Laboratory Director
	P/F	1(605) 688-5466 / (605) 688-6295
	Email	Nancy.Thiex@sdstate.edu
	CC Info	For re-analysis: contact Zelda McGinnis-Schlobohm and Nancy Anderson Zelda.Schlobohm@SDSTATE.EDU, Nancy.Anderson@SDSTATE.EDU
	Methods	For analysis Questions only: just CC. Nancy Anderson Approved only for low level selenium analysis.
Severn Trent Laboratories	Address	880 Riverside Parkway West Sacramento, CA 95605 USA
	Contact	Jeremy Sadler
	P/F	1(916) 374-4381 / (916) 372-1059
	Email	jsadler@jstl-inc.com
	Methods	Approved for all inorganic parameters and hazardous waste organics except for Ammonia as Nitrogen . Ag analysis in sediment, when known quantity is present, request 60/ OB
Sierra Foothill Laboratory, Inc.	Address	255 Scottsville Blvd, Jackson, CA 95642
	Contact	Sandy Nurse (Owner) or Dale Gimble (QA Officer)
	P/F	(209) 223-2800 / (209) 223-2747
	Email	sandy@ajsierralab.com, CC: dale@ajsierralab.com
	Methods	Approved for all inorganic parameters, microbiological parameters, acute and chronic toxicity.
Twining Laboratories, Inc.	Address	2527 Fresno Street Fresno, CA 93721 USA
	Contact	Jim Brownfield (QA Officer), Sample Control (for Bottle Orders)
	P/F	(559) 268-7021 / (559) 268-0740
	Email	JimB@twining.com cc. to JosephU@twining.com
	Methods	Approved only for general chemistry and boron analysis.
U.S. Geological Survey - Denver	Address	Denver Federal Center Building 20, MS 973 Denver, CO 80225 USA
	Contact	Stephen A. Wilson
	P/F	(303) 236-2454 / (303) 236-3200
	Email	swilson@ajusgs.gov
	Methods	Approved only for inorganic parameters in soil .
USBR Technical Service Center Denver Soils	Address	Denver Federal Center Building 67, D-8750 Denver, CO 80225-0007 USA
	Contact	Juli Fahy or Stan Conway
	P/F	1(003) 445-2188 / (303) 445-6351
	Email	jfahy@ajdo.usbr.gov
	Methods	Approved only for general physical analysis in soils.
Western Environmental Testing Laboratories	Address	475 East Greg Street # 119 Sparks, NV 89431 USA
	Contact	Ginger Peppard (Customer Service Manager), Andy Smith (Lab Director), Michelle Kramer
	P/F	(775) 355-0202 / (775) 355-0817
	Email	ginger@WETLaboratory.com, andy@WETLaboratory.com, michelle@WETLaboratory.com
	Methods	Approved only for inorganic parameters (metals, general chemistry).

Revised: 04/16/2007 MP-157

Table 3. Check Structure Locations for Real-Time Measurements of Electrical Conductivity

Check Structure	Milepost
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Little Dry Creek	5.50
Kings River	28.52
Sand Creek	46.04
Dodge Ave	61.03
Kaweah River	71.29
Rocky Hill	79.25
Fifth Ave	88.22
Tule River	95.67
Deer Creek	102.69
White River	112.90
Reservoir (Woollomes)	121.51
Poso Creek	130.03
Shafter	137.20
Kern River	151.81

Table 4. Friant-Kern Canal In-Prism Water Quality Thresholds

Period	Salinity Threshold expressed as EC ($\mu\text{S}/\text{cm}$)	Chloride Threshold (mg/L)	Boron Threshold (mg/L) ¹	SAR
Period 1 March 1 – June 30	1,000 ²	102 ³	0.4	3
Period 2 July 1 – August 31	500 ⁴	55 ⁴	0.4	3
Period 3a September 1 – February 28	1,000 ²	102 ³	0.4	3
Period 3b September 1 – February 28	1,000 ²	123 ⁵	0.4	3

Attachment A. Friant-Kern Canal Water Quality Guidelines

Water Quality Advisory Committee

Draft Charter

Background and Objective

The Friant-Kern Canal Water Quality Guidelines (Guidelines) were developed by the Ad hoc Water Quality Committee and adopted by the Friant Water Authority based on the voluntary consensus of a significant majority of the contractors of the Division of the Central Valley Project (Friant Division). The Guidelines are in response to concerns regarding the implementation of programs and projects that could introduce water of a lesser quality to the Friant-Kern Canal (FKC), when compared to water quality of historic deliveries from Millerton Lake. The Guidelines include water quality constituent thresholds based on agronomic principles and proposes a ledger mechanism to determine the required mitigation for introducing water of lesser quality into the FKC.

The Guidelines stipulate that the Friant Water Authority (FWA) will appoint a Water Quality Advisory Committee (Committee) composed of Friant Division Long-Term Contractors (Friant Contractors) and other water contractors involved in either introducing water to or receiving water from the FKC. The Committee will provide recommendations to FWA and Reclamation on operations and monitoring requirements of the FKC. This document describes Committee membership and Committee roles and responsibilities.

Water Quality Advisory Committee Membership

The appointed Committee will be composed of Friant Contractors and other water contractors who may either be introducing water to or receiving water from the FKC. Committee membership is described in Table 1. New members in replacement of an existing member or as a new addition to the membership list requires majority approval following notice to and the consent of the FWA Board of Directors.

Table 1. Water Quality Advisory Committee Membership

Member
Arvin-Edison Water Storage District
Delano-Earlimart Irrigation District
Kern-Tulare Water District
Lindsey Strathmore Irrigation District
Lower Tule River Irrigation District
Pixley Irrigation District
Porterville Irrigation District

Saucelito Irrigation District
Shafter Wasco Irrigation District
South San Joaquin Municipal Utility District
Terra Bella Irrigation District

Roles and Responsibilities

The Committee will convene on an annual basis prior to the irrigation season or planned reverse flow operations. The Committee will:

- Evaluate current year operations related to Guidelines implementation including but not limited to Ledger operation modifications, potential schedule changes, and potential changing to mitigation deliveries.
- Review and approve annual monitoring.
- Make recommendations regarding the costs and budgets associated with administering and implementing the Guidelines.

The Committee may also convene on an as needed basis under the following conditions:

- When Friant Division Class 1 contract allocation is less than or equal to 25 percent.
- If a future regulatory cost or equivalent fee is imposed on Friant Contractors and a portion of such fee can reasonably be attributed to the incremental difference of water quality conditions in the FKC.
- If there is a significant, scientifically based justification and three out of the following five water contractors agree that a change to Guideline principles and/or criteria should be discussed: Arvin-Edison Water Storage District, Shafter Wasco Irrigation District, Delano-Earlimart Irrigation District, South San Joaquin Municipal Utility District, or Kern-Tulare Water District.
- If FKC water quality continuously exceeds one or more constituent thresholds and pump-in operations must cease.

The Committee will make recommendations to the FWA Board via consensus decision making. If 100% consensus cannot be reached, a recommendation will be made, and minority viewpoints will also be communicated. The Committee will provide all recommendations to the FWA Board. Single-year modifications to Guidelines implementation, monitoring, and/or pump-in operations will be noticed to all Friant Contractors. Recommendations requiring substantial modifications or updates to the Guidelines will be provided to the FWA Board and the FWA will coordinate with Reclamation to implement recommended changes.

ATTACHMENT C

MEMORANDUM

DATE: April 20, 2021
TO: Bureau of Reclamation
FROM: Ian Buck-Macleod, Water Resources Manager
SUBJECT: SUMMARY OF CHANGES TO FKC WATER QUALITY POLICY GUIDELINES

Introduction

The Friant Water Authority (FWA) ~~has~~ worked closely with the Friant-Kern Canal Water Quality Ad hoc Committee's Small Group to review and update [the U.S. Department of the Interior, Bureau of Reclamation's \(Reclamation\) 2008 "Policy for Accepting Non-Project Water into the Friant-Kern and Madera Canals"](#) (herein referred to as Guidelines) [to describe the approval process, implementation procedures, and responsibilities of water contractors requesting permission from Reclamation to introduce water into the Friant-Kern Canal \(FKC\)](#). The updates to ~~this document~~ [the Guidelines](#) reflect the operational principles and criteria developed by the [Friant-Kern Canal Water Quality Ad hoc Committee \(Ad hoc\)](#) as part of the draft Friant-Kern Canal Water Quality Policy. Friant Division [of the Central Valley Project](#) long-term contractors (Friant Contractors) ~~have~~ voluntarily proposed updates to the Guidelines as well as the implementation of additional water quality thresholds, monitoring, and mitigation [for management of water quality conditions in](#) ~~on~~ the FKC.

Updates to Reclamation's FKC Water Quality Guidelines

Proposed updates to the Guidelines ~~have been were~~ made within the original document structure; however, ~~significant changes were have been~~ made to each ~~of the~~ sections. [A full red-line version of the document showing all proposed updates is available for review.](#) Key updates are summarized below: ~~A full red line version of the document is available for review.~~

- *Guidelines for Accepting Water into the Friant-Kern Canal* – Although the original document was labeled as a Policy, Reclamation has stated that the requirements are managed as guidelines, ~~not a policy.~~ ~~and~~ ~~To~~ reflect this approach, the title ~~was has been updated~~ appropriately ~~updated~~. The proposed [title and subsequent text revisions also reflect that the proposed Guidelines updates also](#) only apply to the Friant-Kern Canal.
- *Authorization* – Updates include additional references to the current transferred works agreement between Reclamation and FWA as well as [language from Section 9\(d\) of the Repayment Contract language for the Central Valley Project Friant Division issued by Reclamation](#). This language supports FWA's authority to implement these Guidelines and to maintain and protect water quality in the ~~canal~~ [FKC](#).
- *Types of Non-Project Water* – All references to Project and Non-Project water ~~have been were~~ removed. New water quality thresholds, monitoring and mitigation are focused on Millerton [Lake](#) versus Non-Millerton [Lake](#) water supplies. Friant Contractors ~~have~~ voluntarily proposed this change ~~in language~~ in order to implement comprehensive water quality management on the FKC. Friant Contractors are concerned with incremental changes in water quality from all

sources of water introduced or diverted into the FKC, including groundwater pump-ins, surface water diversions and pump-ins, recaptured and recirculated [San Joaquin River Restoration Program](#) Restoration Flows, and water introduced at the FKC-[Cross Valley Canal](#) intertie via reverse-flow.

- *Water Quality Monitoring, Forecasting, and Communications* – [Descriptions of W](#)water quality monitoring activities ~~were have been~~ expanded and the Guidelines ~~were have been~~ updated to detail monitoring locations, frequency, reporting and other communications.
- *Water Quality Constituent Management* – Additional water quality reporting requirements ~~were are~~ included, as well as constituent management protocols to maintain the highest possible water quality while still providing operational flexibility for projects and pump-in programs.
- *Mitigation* – The Guidelines define required mitigation for all water sources. Mitigation is designed to offset ~~the~~ incremental impacts due to changes in water quality. [Water C](#)contractors introducing water into the FKC will pay an additional volume based on source water quality. Mitigation is proportionally distributed to down-stream water users.
- *Appointment of Water Quality Advisory Committee* – FWA, in coordination with Reclamation, will appoint a Water Quality Advisory Committee which will provide recommendations to FWA on operations and monitoring requirements. The Water Quality Advisory Committee will operate under an established charter. [The chartered is attached to the Guidelines, as Attachment- A to the Guidelines.](#)
- *Guidelines Management* – ~~Text was~~[Significant language has been](#) added to describe the responsibilities of FWA, the Water Quality Advisory Committee, and circumstances which would allow for modifications to ~~be made to~~ the guidelines. Updates to the guidelines and authorization provides redistribution of Reclamations and FWA’s responsibilities related to implementation. Implementation responsibilities are outlined in Table 1 [below](#).

Table 1. Guideline Implementation Responsibilities

Responsibilities of Reclamation	Responsibilities of the -FWA
<ul style="list-style-type: none"> • Authorize Warren Act Contracts • Approve discharge facility licensing • Pay for collection and analyses of water quality samples taken at Friant-Kern Canal at Friant Dam and Friant-Kern Canal at Lake Woollomes 	<ul style="list-style-type: none"> • Perform water quality sampling during pump-in operations • Coordinate laboratory water quality testing • Coordinate with Friant Contractors on water quality data monitoring and analysis • Manage water quality and operations database • Perform weekly water quality reporting and forecasting using FKC Water Quality Model • Perform weekly analysis to determine mitigation and distribution to

	<p>respective Friant Contractors using the FKC Water Quality Ledger</p> <ul style="list-style-type: none">• Coordinate with Reclamation’s South-Central California Area Office SCCAO on water quality reporting, mitigation, and contractual requirements• Coordinate and facilitate the work of the Water Quality Advisory Committee
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ATTACHMENT D

Andrew N. Safford, PE

Vice President/Chemical Engineer

Mr. Safford is a registered professional chemical and civil engineer with over twenty-eight years of practice. He has performed environmental compliance audits and reviewed environmental management systems (EMS) at numerous manufacturing facilities and assisted with closure and redevelopment of commercial and industrial facilities. He has designed and implemented remedial actions and pollution controls at manufacturing facilities and at other sites where environmental issues arise. In support of these remedial actions, Mr. Safford has evaluated the manner in which the environmental standard of care has evolved in response to passage of state and federal regulations, including the Federal Water Pollution Control Act of 1972, Safe Drinking Water Act of 1974, Clean Water Act (CWA) of 1977, Resource Conservation and Recovery Act (RCRA) of 1976, Hazardous and Solid Waste Amendments (HSWA) of 1984, and Clean Air Act (CAA) of 1970. Examples of the types of projects with which Mr. Safford has been involved are provided below.



Relevant Experience

- **CV-SALTS 5-Year Work Plan to Address Salts and Nitrate.**, *Central Valley, CA*. Mr. Safford led the technical effort to develop Central Valley Salinity Alternatives for Long-Term Sustainability (CV SALTS) 5 Year Work Plan and conceptual model for understanding salts and nitrates in the Central Valley. The 5 Year Work Plan specified preparation of the Strategic Salt Accumulation Land and Transportation Study (SSALTS). This study examined alternatives for managing salts associated with irrigated agriculture in the Central Valley. Among the alternatives evaluated include managing brine by deep well injection, as supply for hydraulic fracturing by the oil and gas industry, and ocean disposal through East Bay Municipal Utility District (EBMUD) existing wastewater treatment plant (WWTP) outfall to San Francisco Bay.
- **Litigation Support Regarding Water Exchanges.** Mr. Safford is assisting the James Irrigation District (JID) with litigation regarding proposed action that would allow the United States Department of the Interior, Bureau of Reclamation to issue a series of agreements over a period of 20 years that authorize the exchange of up to 25,000 acre-feet per year of surface water for groundwater pumped by the Mendota Pool Group. On behalf of the JID, he has conducted a technical review of the final environmental impact report/environmental impact statement for the proposed action. Statistical analysis of water quality data and groundwater exchange volumes discharged to the Mendota Pool

Education

- M.S., Civil Engineering, Stanford University, 1991
- B.S., Chemical Engineering, University of California, Davis, 1984

Registrations/Certifications

- Professional Chemical Engineer in California (#4577)
- Professional Civil Engineer in California (#56084)
- ARB Lead Verifier of Greenhouse Gas Emission Data
- ARB Refinery Sector Specialist
- Forty-hour HAZWOPER Training Course
- Eight-hour Health and Safety Training Course for Supervisors

Affiliations

- American Institute of Chemical Engineers

confirm that the proposed action results in both short-term and long-term adverse impacts to surface water that is delivered to the JID.

- **Litigation Support Involving Discharge of Salt and Nitrate.** Mr. Safford provided litigation support to the Arvin-Edison Water Storage District (AEWSD) in *Arvin Edison Water Storage District v. South Valley Water Banking Authority* (Ventura County Case No. 56 2018 00509394). AEWSD opposed a proposed project involving the return of lesser quality groundwater to the Friant Kern Canal that would increase the concentrations of salt, nitrate, and other contaminants in surface water delivered to AEWSD. Mr. Safford identified technical aspects of the proposed project that did not comply with the CWA; the Porter Cologne Water Quality Control Act; and the Sacramento River Basin and San Joaquin River Basin, and Tulare Lake Basin Water Quality Control Plans. The court ruled in favor of our client and the proposed project was abandoned.
- **Assessment of Pump-In Projects on FKC Water Quality.** On behalf of AEWSD, Mr. Safford has assessed the potential water quality ramifications of programs/projects that allow the transfer, banking and exchange, and/or return of water into the Friant-Kern Canal (FKC). He has examined the possible effects associated with the Friant Water Authority's FKC Reverse Flow Pump Back Project, Tule River-FKC Water Bank Project, Sun Pacific Farming Recharge Facility Project, Poso Creek Water Company's Multiyear Banking and Transfer Program, Ivanhoe Irrigation District's 5-year Warren Act Agreement and Transfer Program, and Westside Mutual Water Company Multiyear Banking and Transfer Program.
- **Evaluation of Groundwater Elevations on Groundwater Arsenic Concentrations:** Mr. Safford is helping a water purveyor evaluate the effects of declining groundwater levels on dissolved arsenic concentrations in its water bank. Arsenic is a naturally occurring, semi-metallic trace element with complex chemistry. Certain forms of arsenic can be soluble under anoxic conditions while others can be soluble under oxic conditions. Mr. Safford is assessing whether steeper vertical hydraulic gradients are causing soluble forms of arsenic within the Corcoran Clay to be released.
- **Remediation of Chlorinated Solvent Plume in Basin Impacted by Salts and Nitrate.** Mr. Safford assisted a group of private companies, a collection of municipalities, water agencies, and several military branches that received draft Cleanup and Abatement Orders from the Santa Ana Regional Water Quality Control Board to address domestic supply wells on numerous private residences that have become contaminated with salts, nitrate, and chlorinated organic solvents. Mr. Safford and others from EKI served on a technical subcommittee that consisted of representatives from the companies, municipalities, water agencies, and military. EKI prepared the remedial investigation (RI) and devised the remedies presented in the feasibility study (FS) for the groundwater contamination plume that simultaneously fulfilled the objective of the municipalities and water agencies to increase local water supplies. EKI also prepared remedy cost estimates. Collaboration amongst the stakeholders promoted opportunities for the municipalities and water agencies to pursue and secure state and federal funding to financially support the implementation of the project. This project will facilitate pumping and treatment of additional groundwater to provide much needed water for drought-plagued California. A settlement was reached with the municipalities and water agencies that relieved our clients of ongoing financial obligations.
- **Salinity Source Control Plan, Turlock, CA.** EKI assisted the City of Turlock with implementation of its Salinity Source Study and Salinity Source Control Plan, which is specified in the National Pollutant Discharge Elimination System permit issued for the City's wastewater treatment facility. Mr. Safford directed the estimation of salt loads for the City's Significant Industrial Users (SIUs) and assessment of potential means to cost effectively reduce these loads. Work on this project included the performance of water and salt mass balances, and wastewater testing to distinguish the fractions of SIU loads that are attributable to mineral salts versus charged organic matter.
- **Groundwater Replenishment Reuse Project.** Mr. Safford recently completed review of the technical requirements for managing tertiary treated municipal wastewater from a residential development. Recycled water will be pumped into a lake for indirect potable reuse and landscape irrigation. He examined National Pollutant Discharge

Elimination System (NPDES) permit requirements, Waste Discharge Requirements (WDRs), and Water Reclamation Requirements (WRRs) related to a Groundwater Replenishment Reuse Project (GRRP).

- **Reduction of Salt and Nitrogen at Rendering Plant, California Central Valley.** Mr. Safford conducted a salt and nutrient mass balance on a rendering plant. The resulting mass balance identified major sources of salts and nutrients that led to process changes enabling our client to meet CV RWQCB's WDRs. Blood from rendered animals is now incorporated in feed products as opposed to being discharged to the plant's wastewater treatment system. Similarly, brine is recovered from water softener regeneration and deep fryer oil and trucked for disposal through East Bay Municipal Utility District wastewater treatment plant outfall to San Francisco Bay.
- **Review of Regional Board SNMP.** On behalf of the Leadership Counsel for Justice and Accountability and other environmental justice stakeholders, Mr. Safford reviewed CV SALTS final draft Salt and Nitrate Management Plan (SNMP) and supporting technical documents, which included, but were not limited to CV-SALTS Central Valley SNMP Substitute Environmental Document (SED) and CV SALTS Central Valley SNMP Economic Analysis. Mr. Safford summarized the findings of this review in a technical report that were appended to and referenced in environmental justice stakeholders comment letters to the Central Valley Regional Water Quality Control Board.
- **Salt Mass Balance on Groundwater Basin.** Mr. Safford co-authored a study describing a mass balance approach to evaluate salinity sources in the Turlock Subbasin. The evaluation included a salt mass balance as the first step to effective salt management in the Turlock Subbasin. Mr. Safford worked closely with the Turlock Irrigation District to identify key data, issues, and questions prior to publishing the study. Data was compiled and evaluated from multiple sources including agricultural and municipal pumping records, imported surface water records, land use maps, water quality data, and dairy, municipal, and food processing operational and waste management practices and data. The mass balance approach was proposed as an accessible and transparent method to facilitate coordination among stakeholders and to identify productive avenues for policy development without the need for basin-wide groundwater flow and solute transport modeling.
- **Site Remediation and Litigation Support, Southern California.** Mr. Safford served as project manager for the RI of a former pesticide formulating facility in Southern California. The RI was performed under a private cost recovery action under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), with Santa Ana Regional Water Quality Control Board oversight, that enabled our client to return a very contaminated property to the seller and operator that caused the damage. Essential to cost recovery was demonstration that the contaminants migrating from the facility were transformation products of the pesticides originally discharged by the seller and not due to a separate release.
- **Superfund Litigation Support, Seattle, Washington.** Mr. Safford is providing litigation support to a client named as a potentially responsible party (PRP) for the Lower Duwamish Waterway (LDW) Superfund Site in Seattle, Washington. Industries and maritime activities have resulted in discharge of PCBs, arsenic, and polycyclic aromatic hydrocarbons (PAHs) into the LDW for over 100 years. The City of Seattle adds to the contamination by its continued discharge of storm water with these same pollutants to the waterway. The total estimated net present value cost for the selected remedy is \$342 million. Mr. Safford coordinated research into historical land uses, chemical fate and transport analysis, and generation of cost estimates that have been used in mediation hearings to reach consensus on allocation percentages that should be assigned to various PRPs.
- **Vacated Decision to Include Site on NPL, Midwestern United States.** Mr. Safford provided technical assistance and litigation support to a real estate investment trust (REIT) that once owned a retail complex with a dry cleaner. This former property is part of an industrial area in Midwestern United States that U.S. EPA improperly added to the National Priorities List (NPL). Mr. Safford identified inconsistencies with the Hazard Ranking System (HRS) score assigned by U.S. EPA. This effort entailed reviewing geological and hydrogeological data to identify errors and omissions in the conceptual site model used by U.S. EPA to score the site. Our client prevailed. The DC Circuit

decided, in *Genuine Parts Company v. EPA*, No. 16-1416 (D.C. Cir. May 18, 2018), to overturn U.S. EPA's decision to list the West Vermont Drinking Water Contamination Site on the NPL.

- **Expert Witness Regarding Remedial Action Cost Estimation, *Southern California*.** Mr. Safford served as an expert witness with regards to cleanup of crude oil, diesel fuel, and gasoline from pipelines in Southern California. He was retained by a PRP group to identify appropriate remedial actions and estimate associated costs. These costs were used in mediation sessions to resolve the matter without proceeding to trial in United States District Court.
- **Site Remediation and Litigation Support, *Santa Clara, California*.** Mr. Safford provided litigation support in connection with a former dry cleaner in the Santa Clara, California. Our client prevailed in California Superior Court and obtained a writ of administrative mandamus to modify a Cleanup and Abatement Order issued by the San Francisco Bay Regional Water Quality Control Board (SFRWQCB). Our client was removed from the Order and reimbursed fully for costs that it incurred to comply with Order requirements. While preserving our client's litigation position, EKI worked collaboratively with the current property owner and the SFRWQCB, both of which were defendants in the case. Mr. Safford, on behalf of our client, managed the remedial investigation and preparation of the remedial action plan (RAP). The approved remedy consists of soil vapor extraction (SVE) and enhanced reductive dechlorination/in-situ chemical reduction (ERD/ISCR) to treat volatile organic compound (VOC) source areas followed by monitored natural attenuation to achieve cleanup goals.
- **Chemical Manufacturing Plant Superfund Remediation.** Mr. Safford is assisting with the remediation of a large Midwestern chemical manufacturing plant. Soil and groundwater at the plant contain chlorinated solvents in the form of pooled and residual dense non-aqueous phase liquid (DNAPL). The widespread presence of DNAPL in heterogeneous sediments makes groundwater restoration technically impracticable at this site, which is included on the NPL. U.S. EPA issued a technical impracticability (TI) waiver for the plant as part of the Record of Decision (ROD). The RI included characterizing impacts of DNAPL seeps on riverine sediments and biota. Remedial actions specified in the ROD are intended to contain DNAPL such that the river adjacent to the plant is protected.
- **Expert Witness and Litigation Support.** Mr. Safford also served as an expert witness with regards to recovering past costs and establishing allocation of future costs for designing and implementing remedial actions at this same Midwestern chemical manufacturing plant. Litigation support services included generating cost estimates and performing probabilistic simulations (i.e., Monte Carlo analysis) to quantify cost uncertainties associated with investigating and remediating DNAPL source areas that are due to historical operations of the former owner of the chemical manufacturing plant. Our client prevailed and the former owner has assumed responsibility for all costs associated with fulfilling the requirements of the ROD.
- **Remediation of Basin-wide Groundwater Contamination.** Mr. Safford assisted with evaluating the costs of remedial actions that the Department of Toxic Substances Control (DTSC) planned to implement at a former manufacturing site in the North Orange County Groundwater Basin (North Basin). These cost estimates combined with our assessment of alternative remediation approaches persuaded our client and its insurers that assuming responsibility for site cleanup will be less expensive than reimbursing DTSC to direct this effort. Our client has entered into an Agreement to Perform Response Actions & Settlement with DTSC. EKI is performing technical work on behalf of our client to meet Agreement requirements. U.S. EPA has agreed to act as the lead agency to coordinate investigation and remediation of regional groundwater VOC plumes in the North Basin. U.S. EPA has requested our client's participation in conducting a RI/FS of the North Basin. We are helping our client respond to this request.
- **Power Generation Plant CWA Citizen Suit.** In connection with a threatened CWA citizen suit, Mr. Safford prepared a Spill Prevention, Control, and Countermeasure (SPCC) Plan and Storm Water Pollution Prevention Plan (SWPPP) for a power generation plant in Northern California. Both plans addressed operating procedures and control measures for fuel storage tanks, pipelines, oil-filled transformers, petroleum coke piles, and oil-water separators that took in account federal categorical pretreatment standards for steam electric power generating facilities.

Potential issues associated with storage and use of petroleum products at the plant were successfully resolved during the 60-day “grace period,” thereby preventing filing of a suit.

- **Concrete and Asphalt Mixing Plant CWA Citizen Suit.** Mr. Safford was involved in a separate threatened CWA citizen suit pertaining to a ready-mix concrete and hot-mix asphalt plant. The suit alleged Best Management Practices (BMPs) at the facility did not comply with federal categorical pretreatment standards for the paving and roofing (tars and asphalt) industry. Based upon his evaluation, BMP improvements were made and the SPCC Plan and SWPPP for the facility were revised. Notwithstanding these improvements, Mr. Safford demonstrated the categorical pretreatment standards did not apply because the facility mixed cement and asphalt and did not manufacture these products for which the standards were promulgated. No suit was filed.
- **Closed Loop Recycling for Chemical Manufacturer.** In 2015, U.S. Environmental Protection Agency (U.S. EPA) revised its definition of RCRA hazardous solid waste by incorporating four factors that constitute legitimate recycling. Mr. Safford is assisting a chemical manufacturer with reclamation of organic materials from above ground storage tanks and transfer of the materials to the chemical production process whereby the “closed loop recycling” exemption is achieved. By recycling the materials to the chemical process, the company avoids classifying the materials as RCRA hazardous solid waste, lessens environmental impacts, and saves hundreds of thousands of dollars in waste treatment and disposal costs.
- **Chemical Producer NPDES Point Source Permitting.** Mr. Safford is assisting a chemical producer with renewal of its point source NPDES permit. U.S. EPA lowered the ambient water quality criterion for hexachlorobenzene to 0.000079 micrograms per liter ($\mu\text{g/L}$). The cost of treating the effluent to this level is estimated to be \$100 million dollars or more. As an alternative, EKI is developing a laboratory method to demonstrate to the permitting agency that hexachlorobenzene in the effluent is bound to anthropogenic forms of organic carbon and, thus, not bioavailable. If testing shows this to be the case, the agency has agreed that no reasonable potential exists for the discharge to exceed the hexachlorobenzene state water quality standard and no treatment for this chemical will be required.
- **Chlorine Manufacturer NPDES Permit, West Virginia.** He is currently assisting a different chemical producer in West Virginia with its point source NPDES permit. The Ohio River Valley Water Sanitation Commission (ORSANCO) recently eliminated mixing zones for bioaccumulative chemicals of concern, which include mercury and hexachlorocyclohexane. Mr. Safford is assisting the client with modifying its diffuser from a single port to a multi-port design to accomplish rapid and complete mixing in the Ohio River, which will support issuance of a NPDES permit with higher Water Quality Based Effluent Limits (WQBELs) than those allowed with a mixing zone.
- **Polyethylene Manufacturing Plant Environmental Compliance Audit.** At a petrochemical manufacturing plant, Mr. Safford performed an environmental compliance audit, including conformance with 40 CFR 61.340 National Emission Standard for Benzene Waste, 1990 CAA amendments for control of hazardous air pollutants (HAPs), and Title V requirements for a major source of nitrogen oxides (NOx), VOCs, and HAPs. The work was conducted under client-attorney privilege to assist our client in resolving claims brought by the Louisiana Department of Environmental Quality.
- **Vinyl Chloride Monomer Plant Compliance Audit.** Mr. Safford performed a compliance audit of a vinyl chloride monomer plant on behalf of a prospective purchaser. Evaluated as part of the audit were the potential cost impacts of contemplated state and federal regulations and the effects of plant expansion on environmental regulatory compliance. These potential cost impacts were initially not considered in the transaction and resulted in a significant downward adjustment in the negotiated purchase price of the plant. As part of this project, Mr. Safford has supervised on-going compliance activities with the Kentucky Division of Air Quality, including compilation of the VOC emissions inventory and review of air quality data collected by the Kentucky Division of Air Quality.

- **Environmental Assessment of Chemical Manufacturer.** In 2002, Mr. Safford performed a Phase I and Phase II environmental site assessment (ESA) of an ethylene dichloride/vinyl chloride monomer (EDC/VCM) plant and polyvinyl chloride (PVC) plant in Louisiana. The Phase I ESA and Phase II ESA found that soil and groundwater at the site had been impacted by chemical releases in the form of DNAPL. EKI developed cost estimates of the environmental liabilities that were incorporated into the indemnity and sales price of the purchase agreement for our client.
- **Oil Production and Refinery Operation Oil Spill Contingency Plan (OSCP) and SPCC Plans.** Mr. Safford assisted in preparing an OSCP and SPCC plans for a client's oil production facilities and refinery operations. The OSCP and SPCC plans, as well as improvements to secondary containment systems and spill response procedures, were developed and implemented under attorney-client privilege to address complaints filed by the U.S. EPA under the CWA.
- **U.S. EPA Multimedia Enforcement Action.** In 2002, U.S. EPA initiated enforcement actions against PVC manufacturers under the CAA, RCRA, the CWA, and the Emergency Planning and Community Right-to-Know Act (EPCRA). This multimedia enforcement approach was led by the National Enforcement Investigations Center (NEIC). Mr. Safford has assisted one PVC manufacturer in its evaluation and response to violations of environmental regulations alleged by NEIC.
- **Environmental Assessment of Polymer Manufacturer.** Mr. Safford managed various consultants in assessing the environmental liabilities of a polymer manufacturer with numerous production facilities in the United States, Canada, and throughout Europe. The assessment entailed review of manufacturing operations and waste handling practices to derive estimates of environmental costs that were used to establish the fair market value of the polymer manufacturer.
- **Polyethylene Manufacturing Plant Superfund Remediation.** Mr. Safford performed review and oversight of the Second Operable Unit FS for the Chemplex Superfund site in Clinton, Iowa. This work was performed as part of a RI/FS that enabled the PRPs to abandon U.S. EPA's proposed \$300 million excavation and incineration option in favor of a combined capping and soil vapor extraction approach. The projected present worth costs for this alternative soil remediation approach are at least an order of magnitude less than the option originally proposed by U.S. EPA. Mr. Safford also assisted with evaluating the performance of the 500-gpm groundwater pump-and-treat system that was selected as the remedial action for the First Operable Unit. EKI demonstrated groundwater extraction is no longer needed to contain VOCs in groundwater. U.S. EPA has agreed monitored natural attenuation is sufficient to achieve remedial action objectives.
- **Evaluation of and Alternatives to Remediation at Historic Army Base.** On behalf of the Presidio Trust at the Presidio of San Francisco, Mr. Safford evaluated remedial action alternatives proposed by the Army and developed engineering cost estimates and alternative approaches to remediate the Presidio in a manner that was consistent with the Trust's planned use as financially self-sufficient National Park. This work was used as the basis of negotiations with the Army to transfer cleanup responsibility and \$100 million to the Trust. Mr. Safford supervised preparation of the revised FS for 10 landfill sites and approximately 20 smaller sites at the Presidio. This document included an evaluation of background metals concentrations in soil, human health and ecological risk assessment, Applicable or Relevant and Appropriate Requirements (ARARs) summary, and detailed analysis of remedial action alternatives and associated costs.
- **Remediation of Former Army Base.** To facilitate transfer of the Oakland Army Base, EKI assisted the Oakland Base Reuse Authority (OBRA) in devising a comprehensive and innovative "Brownfields" remediation program for the base, which saved OBRA and the Army tens of millions of dollars in environmental investigation and remediation costs. Mr. Safford supervised preparation of cost estimates that were used in negotiations with the Army and discussions with insurance companies to transfer cleanup responsibility to OBRA. Mr. Safford also directed

preparation of a RAP. An integral component of the RAP is the Risk Management Plan (RMP). The RAP/RMP links remediation requirements with specific post-transfer redevelopment and land uses of the base.

- **Assistance with Waste Characterization, Reuse and Disposal Practices.** Mr. Safford has assisted clients with characterizing and evaluating the reuse and disposal options for various types of wastes. For example, in 2018, he assisted a manufacturer and distributor of medical products with evaluating its current classification and disposal practices for damaged or expired products generated in twelve states throughout the country. Mr. Safford demonstrated many of these materials that were being disposed as medical wastes could safely and legally be recycled or disposed as non-hazardous wastes at a greatly reduced cost.
- **Management of Used Ink for Shipping Company.** In 2013, Mr. Safford helped a shipping company with its classification of used ink generated at several facilities in California. He reviewed information pertaining to the manner in which the used ink is generated and subsequently arranged for collection and laboratory testing of representative used ink samples. As a result of this work, the ink waste was demonstrated not to meet the criteria promulgated in Title 22 of the California Code of Regulations for definition as a hazardous waste and, thus, can be managed and disposed of as a non-hazardous waste in California.
- **Variance from U.S. EPA Land Disposal Restriction (LDR) Treatment Standards.** Mr. Safford led efforts to obtain a variance from U.S. EPA LDR treatment standards for oily sludge that was released at a historical oil recycling facility at the Oakland Army Base. On behalf of the City of Oakland and Army, he prepared a petition for a site specific variance from RCRA LDR treatment standards pursuant to 40 CFR § 268.44(h) for the oily sludge. This sludge had elevated lead concentrations and/or low pH leading to designation as D008 and/or D002 RCRA hazardous waste with underlying hazardous constituents (UHCs), including PAHs and dioxin like compounds. U.S. EPA approved the petition for the LDR variance in 2003, thereby avoiding the requirement to incinerate the oily sludge, which saved millions of dollars in the cost to treat and dispose of the oily sludge.
- **Waste Characterization and Evaluation.** Mr. Safford has assisted clients with characterizing and evaluating the reuse and disposal options for various types of wastes. For example, he designed and implemented a sampling plan to demonstrate that diatomaceous earth filter cake generated from a sugar refining facility in California did not meet the definition of a regulated non-hazardous waste, as contented by state regulatory agencies. Cost savings for our client resulted from the fact that the filter cake can be sold as a product as opposed to being disposed in a landfill as a regulated waste.
- **Industrial Facilities Environmental Compliance Audits.** At numerous industrial facilities throughout the U.S., Mr. Safford has performed environmental compliance audits of air emissions to determine compliance with federal and state regulations. He has assessed VOC emissions inventories for compliance with operating permit limitations and Title V CAA requirements. For some of those assessments, Mr. Safford used TANKS 4.0 and WATER9 to confirm estimates of VOC emissions. Mr. Safford also has evaluated operations to determine conformance with OSHA Chemical Hazard Communication requirements. Identified issues were resolved prior to EKI's clients acquiring the operations or regulatory agencies discovering deficiencies thereby limiting the liability associated with additional operational improvements, penalties, or claims that may have arisen in the future.
- **Industrial Process Operations Permitting and Improvements.** Mr. Safford has assisted industrial clients with evaluating and enhancing their process operations and EMSs. Representative projects include: waste minimization assessment and wastewater treatment evaluation for a pharmaceutical manufacturing facility and a photographic film and paper processing facility, development of VOC emission reduction strategies for a commercial airline maintenance facility, and permitting supervision for a commercial laundry, ice cream and frozen dessert manufacturer, powdered milk and butter manufacturer, cheese manufacturing and whey processing facility, and turkey processing and rendering operations.

**Response to Comment Letter 2b: Arvin-Edison Water Storage District – EKI, Inc.
Comment (May 21, 2021)**

A. Response to Comment 2b-A

As part of the comment letter provided in Comment 2, AESWD also provided an attachment from EKI Environment & Water, Inc. (EKI). The commenter states they have reviewed the Draft EIR, on behalf of AEWSWD, with regard to identifying and assessing the appropriateness of the Draft EIR's treatment quality of water delivered to AEWSWD from the FKC.

Thank you for your comment. Specific comments and responses are provided below.

B. Response to Comment 2b-B

The commenter states the Draft EIR does not comply with California's antidegradation policy.

Thank you for your comment. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. Global Response #4 specifically addresses concerns regarding the federal and State antidegradation policies.

C. Response to Comment 2b-C

The commenter states the Draft EIR does not consider planned revisions to Reclamation's 2008 Water Quality Policy with respect to the removal of references to Project and Non-Project water.

Thank you for your comment. This comment was addressed in Response to Comment 2 E, above and is incorporated here. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. The lead agency understands that Friant Water Authority has proposed a *Draft* Friant Water Quality Policy (Draft Policy). The Draft Policy is not final, nor is it presently in force and thus any analysis of environmental impacts as a result of the Draft Policy are speculative. As noted by Friant Water Authority in the Draft Policy when discussing "Additional Implementation Requirements," Friant identifies "several programmatic challenges...that will continue to be evaluated and addressed" including the need to "address FWA's authority to implement the Policy. FWA's role is limited to complying with Federal and State laws and cannot adopt its own regulations." Friant also states the need evaluate and address the programmatic challenge of "identify[ing] all existing programs and pump-ins and determine which are exempt from the Policy." As the Draft Policy is not final but instead contingent on further evaluation and addressing of issues, is not presently enforceable by Friant Water Authority, and has not been approved by Reclamation, any analysis of environmental impacts as a result of the Draft Policy would be speculative. However, no changes to the 2008 Water

Quality Policy have been finalized, meaning the 2008 Water Quality Policy governs water quality related to the introduction of all water into the FKC. Actions taken pursuant to the proposed Project are and will be subject to all applicable laws and regulations, including Reclamation's current 2008 Water Quality Policy. (Draft EIR, page 4.4-23 ["The Project is and will remain subject to all applicable water quality standards and conditions."].)

D. Response to Comment 2b-D

The commenter states the Draft EIR does not adequately describe the affected surface water environment of the proposed Project, such as, which conditionally approved projects that allow the transfer, banking and exchange, and/or return of water into the FKC are included in the baseline for the Draft EIR.

Thank you for your comment. This comment was addressed in Response to Comment 2 C, above and incorporated here. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. As noted in the Draft EIR, "[t]he practice of occasionally introducing CVP water allocated under the CV contract and delivered through the Delta into the FKC is a long-standing practice that has historically occurred and is a baseline project condition." (Draft EIR, page 4.4-21.) Such practice would not change under the proposed Project, thus the Draft EIR determined no significant impact to water quality in its analysis of Impact 4.4-1. (Draft EIR, page 4.4-20 through 4.4-23.) Actions taken pursuant to the proposed Project are and will be subject to all applicable laws and regulations, including Reclamation's current 2008 Water Quality Policy. (Draft EIR, page 4.4-23 ["The Project is and will remain subject to all applicable water quality standards and conditions."].)

E. Response to Comment 2b-E

The commenter states the Draft EIR does not evaluate the cumulative impacts of importing delta water into the FKC. Specifically, the commenter states the Draft EIR did not quantify the impairment of water quality that would result from the proposed Project or consider reasonably foreseeable future projects. The commenter provided a list of 26 projects that are conditionally approved by Reclamation, since 2008.

Thank you for your comment. Thank you for your comment. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. Global Response #4 addresses specific concerns regarding the federal and State antidegradation policies.

Cumulative impacts are defined as two or more individual impacts that, when considered together, are considerable or that compound or increase other environmental impacts. As discussed in the CEQA Guidelines, the discussion of cumulative impacts must reflect the severity of the impacts, as well as the likelihood of their occurrence. (CEQA Guidelines, Section 15355.) Discussion of cumulative

impacts is required only where a project's incremental effect is cumulatively considerable, as defined in Section 15065(a)(3). Section 15130(a) of the CEQA Guidelines provides that a Lead Agency need not consider an effect significant but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable. The Draft EIR contains a brief description for its bases that the incremental effect of the proposed Project—which constitutes the continuation of baseline conditions—is not cumulatively considerable on page 4.4-27.

Because the proposed Project would not result in any direct or indirect change in the quality or quantity of water delivered to CV Contractors, and the water supply source(s) and means of conveyance would remain unchanged from baseline conditions, no cumulatively significant impacts would occur to surface water resources in the Project Area. (Draft EIR, page 4.4-27.) As for groundwater, the proposed Project could indirectly provide short-term relief to groundwater levels and quality through discouragement of groundwater pumping by CV Contractors, though no cumulative effects on groundwater resources are anticipated. (Draft EIR, page 4.4-27.)

Comment Letter 3



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May 25, 2021

VIA EMAIL AND US MAIL

Eric Limas, General Manager c/o Board of Directors
Lower Tule River Irrigation District
357 E. Olive Avenue
Tipton, CA 93272
elimas@ltrid.org

Re: Notice of Availability of a Draft Environmental Impact Report – Cross Valley Contractors (CVC) Conversion of Water Supply Contracts and Renewal of Conveyance Contracts Project (State Clearinghouse #2020100075)

Dear Mr. Limas:

Please allow this letter, submitted on behalf of Shafter~Wasco Irrigation District (“SWID” or “District”) to begin the discussion about various areas of concern related to above referenced document. The Shafter~Wasco Irrigation District has reviewed the project and found the project does not adequately address or provide adequate mitigation for SWID’s concerns regarding water quality and subsidence in the Friant Kern Canal (FKC). The DEIR does not adequately consider these potential impacts or otherwise comply with the California Environmental Quality Act (CEQA) and the Project will result in significant environmental impacts. These impacts would be of particular concern to SWID given its reliance on the FKC for delivery of its Millerton Lake supplies. Any reverse flow of non-project water or recovery of any water into the FKC that enters or passes SWID’s turnouts that has different water quality than water normally conveyed in the FKC in conjunction with a project that will possibly perform pump-in to the FKC and exacerbate subsidence is unacceptable to the stakeholders of SWID. Accordingly, as explained below, the DEIR is deficient and the Project’s impacts must be evaluated and mitigated, as appropriate, in an Environmental Impact Report (EIR).

3 - A

The DIER concedes that the project includes many areas of controversy, yet it does not mitigate them. The DEIR simply dismisses the concerns of others as inconsequential and irrelevant because of *past performance*. SWID respectfully

3 - B

disagrees that continued degradation to water quality and its water supply by other operations within the FKC and per past or future Reverse Flow actions is inconsequential. The DEIR, includes, but is not limited to the following excerpts that raise specific concerns:

1.13 - Areas of Controversy

Areas of controversy are identified through written agency and public comments received during the scoping period. One comment letter was received from the Native American Heritage Commission (NAHC), dated October 5, 2020, recommending consultation with California Native tribes that are traditionally and culturally affiliated with the geographic area of the proposed Project to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

While no comment was received during the scoping period for this Project regarding water quality, in the past certain agencies have expressed concerns regarding the delivery of CVP water to the CV Contractors relating to water quality. Areas of controversy generally include that CVP water delivered through the Delta differs in quality from CVP water delivered through Millerton Lake. However, as noted the Project is a continuation of baseline activities: the Project allows the CV Contractors to continue to receive CVP water in the manner consistent with current and historical practices.

2.8.1- RECLAMATION-POLICY FOR ACCEPTING NON-PROJECT WATER INTO THE FR/ANT-KERN AND MADERA CANALS WATER QUALITY MONITORING REQUIREMENTS

This policy document describes the approval process, implementation procedures, and responsibilities of a contractor requesting permission from Reclamation to introduce nonproject water into the FKC and Madera Canals, features of the Friant Division of the CVP. The monitoring requirements contained herein are intended to ensure that water quality is protected and that domestic and agricultural water users are not adversely impacted by the introduction of non-project water. The discharge of non-project water shall not in any way limit the ability of either Reclamation or the Friant Water Authority (FWA) to operate and maintain the Canals for their intended purposes nor shall it adversely impact existing contracts or any other agreements. The discharge of non-project water into the Canals will be permissible only when there is excess capacity in the system as determined by FWA and or Reclamation.

3 - B
Cont

2.8.2 - FR/ANT-KERN CANAL/CROSS VALLEY CANAL INTERTIE OPERATING AGREEMENT

This agreement was made and entered into effect on April 23, 2010, by and among the FWA and the Kern County Water Agency (KCWA). Per the agreement FWA shall allow KCWA to deliver water through the CVC/FKC Intertie to or from the FKC for approved deliveries to the terms and conditions of the Friant Division water service contracts, the transfer agreement and the Friant operational guidelines.

2.8.3 - FR/ANT OPERATIONAL GUIDELINES

The purpose of these guidelines is to establish the procedures to be used in managing the water supplies of the Friant Division, CVP. The intent is to define and set forth the priority of water service, water scheduling, and proration guidelines used in the Friant Division Service Area so that the water supplies may be optimized and managed efficiently system-wide and in compliance with the water service contracts and the operations and maintenance agreement(s) between the United States and the operating non-federal entity.

Friant-Kern Canal

The FKC conveys water from Millerton Lake on the San Joaquin River south to Kern River near Bakersfield. The FKC is owned by Reclamation but, since October of 1986, has been operated and maintained by the FWA as Reclamation's "non-federal operating entity." Water deliveries via the FKC are made pursuant to water service and repayment contracts and based on hydrologic supply and district demands. Water is typically delivered south by gravity flow from Millerton Lake. Alternatively, water may be delivered to contractors from other sources such as from the Delta and pumped into the FKC. Such deliveries frequently introduce water into the FKC near its southern end at its intertie with the CVC and may then be pumped from lower reaches of the FKC to its upper reaches. This upstream flow ("reverse flow") is accomplished by operating pumps at selected checks to lift the water from the downstream side of the check, over the check, to the upstream side of the check. One such reach is created by the Shafter Check Structure at FKC Milepost 137.2, where a permanent 30 cubic feet per second ("cfs") pump is located and where FWA installs other temporary pumps as needed. FWA operates all such pumps at the Shafter Check Structure. Other similar reaches further north are created by the Paso Check and the Lake Woollomes Check, where FWA installs temporary pumps as conditions warrant to facilitate delivery of water further north in the FKC. If all three checks are operated in reverse, water can be conveyed north from the CVC to KTWD, the southern-most CV Contractor.

3 - B
Cont

Reverse flow operation of the FKC, as discussed above and where water is introduced to the FKC at its southern end from the CVC and other sources and pumped north, is part of FWA's Canal operations procedures, which provide:

"Reverse flow

Water contractors with facilities that tie into the FKC within the reaches upstream of the Kern Check can introduce supplemental flows into the system and reverse flow these deliveries upstream as far as Lake Woollomes. Historical introductions have been by means of siphons in the Kern Check along with pumps within the Shafter and Paso Checks. The addition of the bi-directional intertie with the Cross Valley Canal allows water to be directly introduced into the FKC within the Kern Check. This intertie was installed and approved under USER guidelines. All water coming into the FKC is metered for flow rate accuracy and totalized for quantity Reverse flow introductions in the FKC are either diverted to contractors within the pumped-in reach or pumped over the upstream check structure in order to satisfy demand. Reverse flow pump installations may be installed at the Shafter, Poso, and Reservoir Check Structures to further reverse flow any water in excess of each check's demands. All flows introduced into the FKC are coordinated through the FWA Water Operations Department, USER, introducing contractors, and receiving contractors."

3 - B
Cont

Reclamation's water deliveries in the region are further made to its contractors pursuant to the terms of the (1) *The United States Department of the Interior Bureau of Reclamation South-Central California Area Office Operational Guidelines for Water Service Friant Division Central Valley Project* (2) *CVC Operations Manual*, and (3) *the Fri ant Operational Guidelines*. The Project is and will remain subject to these standards and conditions. This reverse flow operation has been historically, and presently is, used to move CVP water from the CVC to Friant Division contractors or some of the CV Contractors, such as KTWD.

The long-standing practice introduces CVP water from the CVC with a typically higher total dissolved solids (CVP water that moves through the Delta may include, among other things, sodium, chloride, and boron at relatively higher levels than CVP water that moves through Millerton. As outlined in the Water Quality Policy and discussed in more detail below, such water is analyzed in the FKC for "for Title 22 and many other constituents) concentration than CVP water from Millerton, into the FKC. This water quality concern is addressed with respect to AEWSD in Article 9(c) of the CVC Operating Agreement², to which AEWSD is a party, which provides:

"Use of the Intertie for delivery of water from the Cross Valley Canal to the Friant Kern Canal may result in adverse water quality impacts to Arvin-Edison. Due consideration for such impacts shall be negotiated between those Participants desiring to introduce water into the Friant-Kern Canal and Arvin-Edison; provided, however, no such consideration shall be due with respect to any water provided under existing contracts and renewals thereof between Rag Gulch, Kern-Tulare and the Fresno-Tulare Group and the United States for providing for deliveries from the California Delta or Rag Gulch or Kern-Tulare supplies delivered pursuant to federal approval."

Project Impacts

Impact 4.4-1:

It is possible that the CV Contractors' supply could be exchanged to supplement existing groundwater banking facilities. Given the relatively high quality of the CVP water, use of the water for recharge may result in increased quality of groundwater supply in some situations. The introduction of CVP water allocated under the CV contracts into the FKC could reduce the relative quality of the FKC water depending on if there is any co mingling of the CVP water delivered through the Delta and CVP water delivered through Millerton Lake. The practice of occasionally introducing CVP water allocated under the CV contract and delivered through the Delta into the FKC is a longstanding practice that has historically occurred and is a baseline project condition. As outlined below, the FWA's canal operations procedures expressly include the introduction of such water into the southern end of the FKC and moving it by "reverse flow" north over a series of checks for delivery to contractors.

CVP water that moves through the Delta may include, among other things, sodium, chloride, and boron at relatively higher levels than CVP water that moves through Millerton. As outlined in the Water Quality Policy and discussed in more detail below, such water is analyzed in the FKC for "for Title 22 and many other constituents."

Under the Water Quality Policy, the reason that no additional water quality analysis over that which is already conducted for Project water is required in order to convey such water through the Friant-Kern Canal is "because it is physically the same as Project water."

Furthermore, the proposed Project would not result in the construction of any new facilities. No potential construction-related water quality impacts would occur. No changes over current conditions would occur as a result of the Project and implementation of the proposed Project would not result in any direct or indirect change in the quality of water delivered to the CV Contractors. The water supply source(s) would remain the same, as would the means and methods of conveyance. The proposed conversion of the CVP contracts and renewal of the conveyance contracts will merely allow

3 - B
Cont

the CV Contractors to continue receiving CVP water in the manner consistent with ongoing and historical practices. No direct or indirect impacts to water quality standards or discharge requirements would occur.

The DEIR notes:

MITIGATION MEASURES No mitigation measures are required.
LEVEL OF SIGNIFICANCE *No impact*

SWID’s contract for CVP water supplies provides for receipt of water “stored in and flowing through Millerton Lake” and delivered through the FKC. The DEIR notes that “no direct or indirect impacts to water quality standards or discharge requirements would occur.” However, the DEIR simultaneously notes that water quality is degraded by such proposed operation within the Project and agrees that it is possible to degrade water quality, yet expresses: “no impacts”.

3 - B
Cont

Reverse flow operation past SWID’s turnouts of non-Millerton water and use of degraded water supplies pumped north of the Shafter Check create cumulative impacts within SWID with the increased use of non-Millerton supplies. The DEIR notes, no cumulative impacts will occur. But, cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. The DEIR is insufficient. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214-15 (Bakersfield); Guidelines, § 15355(b).

If there will be water quality impacts in the supplies in the FKC, that would need to be studied and discussed further in the EIR. SWID is supportive of water management programs; however, SWID has areas of interest about the operation of a project that can degrade water quality and cause subsidence within the Friant Water Authority’s operation and facilities, in particular the FKC.

SWID’s areas of interest stem from its on-going activities with the FKC water quality regiment, subsidence in the FKC, and a variety of State of California regulatory programs. The Central Valley Regional Water Quality Control Board (CVRWQCB) mandates the Irrigated Lands Regulatory Program (ILRP) and a CVSALTS Program. Under the ILRP regulations, the CVRWQCB is limiting the use of groundwater with high nitrate levels. In addition, the CVSALTS Program is envisioned to limit the salt (TDS and/or EC) loading on agricultural irrigated land. Along with a variety of projects that discharge water into the FKC that have cumulative impacts to SWID and other users:

3 - C

5-year FKC Groundwater Pump-In Program
San Joaquin River Restoration Program Recapture and Recirculation EIR
Kaweah River Pump-in Program
Tule River Pump-in Program

Storage and Conveyance of Non-Project Water for Kern Tulare Water District and Lindsay-Strathmore Irrigation District
Delta Lands 770 Warren Act
Kern Tulare Water District and West Kern Water District Groundwater Banking Project
Madera Irrigation District long term banking and return in North Kern Water Storage District and Semitropic Water Storage District
Poso Creek Regional Water Management Group 25-year Program
Cawelo Water District Warren Act
Rosedale Rio-Bravo and Delano Earlimart Irrigation District Banking Program
Kern Tulare Water District Return of Banked Water
North Kern Water Storage District Recovery and Transportation of Banked Water

3 - C
Cont

We believe it possible to have some focused discussion to prevent degradation of water quality and subsidence in the FKC and in particular SWID and similar stakeholders request review and discussion wherein a project can impact crop, soil, and root conditions with a monitoring and rehabilitation program, and other items to address any affected landowners.

Based upon our review of the DEIR, we contend an EIR on the water quality impacts to SWID is required when it can be fairly argued based on substantial evidence that a project “may” have a significant effect on the environment even of the overall effect is beneficial, and disagreement among experts over the significance of an environmental effect generally requires an EIR. Cal. Code Regs., tit. 14, § 15064.

SWID appreciates your anticipated assistance with the above-mentioned items. Please contact the undersigned with any questions or comments.

Regards,



DOUG GOSLING, ESQ.

DAG:jsa

cc: client

Response to Comment Letter 3: Shafter-Wasco Irrigation District (May 25, 2021)

A. Response to Comment 3-A

The participation of Shafter-Wasco Irrigation District (SWID) in the public review of this document is appreciated. The commenter states the Draft EIR does not address potential impacts or provide adequate mitigation for SWID's concerns regarding water quality. Specifically, the commenter states they are concerned with any reverse-flow of non-project water or recovery of any water into the FKC that enters or passes SWID's turnouts that has a different water quality than water typically conveyed by the FKC.

Thank you for your comment. Responses to water quality concerns on these topics are addressed in Global Responses #1-4, contained within this chapter.

B. Response to Comment 3-B

The commenter states the Draft EIR does not mitigate for areas of controversy, and further cites multiple sections of the Draft EIR. The commenter further states their concern regarding degradation to water quality by contending the Draft EIR acknowledges water quality is degraded by operations within the FKC but does not mitigate for impacts. The commenter states the Draft EIR does not analyze cumulative impacts with regard to reverse flow operation past SWID's turnouts. The commenter states water quality impacts in supplies in the FKC must be analyzed in the Draft EIR.

Thank you for your comment. Responses to water quality concerns on these topics are addressed in Global Responses #1-4, contained within this chapter. Global Response #4 specifically addresses concerns regarding the federal and State antidegradation policies.

Areas of controversy are addressed in Section 1.13 of the Draft EIR, as corrected per Section 7.3 of this chapter. Certain agencies have previously expressed concerns regarding the delivery of CVP water to the CV Contractors relating to water quality. However, the proposed Project will not result in any impacts to water quality because the Project is only a continuation of baseline activities, consistent with current and historical practices. (Draft EIR, page 1-19.)

Cumulative impacts are defined as two or more individual impacts that, when considered together, are considerable or that compound or increase other environmental impacts. As discussed in the CEQA Guidelines, the discussion of cumulative impacts must reflect the severity of the impacts, as well as the likelihood of their occurrence. (CEQA Guidelines, Section 15355.) Discussion of cumulative impacts is required only where a project's incremental effect is cumulatively considerable, as defined in Section 15065(a)(3). Section 15130(a) of the CEQA Guidelines provides that a Lead Agency need not consider an effect significant but shall briefly describe its basis for concluding that the incremental effect is not

cumulatively considerable. The Draft EIR contains a brief description for its bases that the incremental effect of the proposed Project—which constitutes the continuation of baseline conditions—is not cumulatively considerable on page 4.4-27.

Because the proposed Project would not result in any direct or indirect change in the quality or quantity of water delivered to CV Contractors, and the water supply source(s) and means of conveyance would remain unchanged from baseline conditions, no cumulative impacts would occur to surface water resources in the Project Area. (Draft EIR, page 4.4-27.) As for groundwater, the proposed Project could indirectly provide short-term relief to groundwater levels and quality through discouragement of groundwater pumping by CV Contractors, though no cumulative effects on groundwater resources are anticipated. (Draft EIR, page 4.4-27.)

C. Response to Comment 3-C

The commenter states that SWID is entitled to water “stored in and flowing through Millerton Lake” under its contract for CVP water supplies, which the Draft EIR acknowledges would be degraded by proposed operation within the Project. The commenter states this acknowledgement conflicts with the finding that “no direct or indirect impacts to water quality standards or discharge requirements would occur.”

Thank you for your comment. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. Global Response #4 specifically addresses concerns regarding the federal and State antidegradation policies. Because the proposed Project would not result in any direct or indirect change in the quality or quantity of water delivered to CV Contractors, and the water supply source(s) and means of conveyance would remain unchanged, the project merely continues operation of ongoing, baseline conditions.

D. Response to Comment 3-D

The commenter states reverse flow operation creates cumulative impacts resulting from individually minor but collectively significant projects taking place over a period of time.

Thank you for your comment. Responses to concerns regarding reverse flow operation are addressed in Global Response #2, contained within this chapter.

Cumulative impacts are defined as two or more individual impacts that, when considered together, are considerable or that compound or increase other environmental impacts. As discussed in the CEQA Guidelines, the discussion of cumulative impacts must reflect the severity of the impacts, as well as the likelihood of their occurrence. (CEQA Guidelines, Section 15355.) Discussion of cumulative impacts is required only where a project’s incremental effect is cumulatively considerable, as defined in Section 15065(a)(3). Section 15130(a) of the CEQA Guidelines provides that a Lead Agency need not consider an effect significant but

shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable. The Draft EIR contains a brief description for its bases that the incremental effect of the proposed Project—which constitutes the continuation of baseline conditions—is not cumulatively considerable on page 4.4-27.

Because the proposed Project would not result in any direct or indirect change in the quality or quantity of water delivered to CV Contractors, and the water supply source(s) and means of conveyance would remain unchanged from baseline conditions, no cumulative impacts would occur to surface water resources in the Project Area. (Draft EIR, page 4.4-27.) As for groundwater, the proposed Project could indirectly provide short-term relief to groundwater levels and quality through discouragement of groundwater pumping by CV Contractors, though no cumulative effects on groundwater resources are anticipated. (Draft EIR, page 4.4-27.)

E. Response to Comment 3-E

The commenter states that if there will be water quality impacts in the FKC, those impacts should be analyzed in the EIR and notes its interest in protecting water quality and preventing subsidence within the FKC.

Thank you for your comment. Responses to water quality concerns are addressed in Global Response #1-4, contained within this chapter.

F. Response to Comment 3-F

The commenter provides a list of groundwater projects that may have a cumulative impact to SWID and other users on degradation of water quality and subsidence in the FKC.

Thank you for your comment. Responses to water quality concerns are addressed in Global Responses #1-4 contained within this chapter. Global Response #4 addresses concerns specific regarding the federal and State antidegradation policies.

Cumulative impacts are defined as two or more individual impacts that, when considered together, are considerable or that compound or increase other environmental impacts. As discussed in the CEQA Guidelines, the discussion of cumulative impacts must reflect the severity of the impacts, as well as the likelihood of their occurrence. (CEQA Guidelines, Section 15355.) Discussion of cumulative impacts is required only where a project's incremental effect is cumulatively considerable, as defined in Section 15065(a)(3). Section 15130(a) of the CEQA Guidelines provides that a Lead Agency need not consider an effect significant but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable. The Draft EIR contains a brief description for its bases that the incremental effect of the proposed Project is not cumulatively considerable on page 4.4-27.

Because the proposed Project would not result in any direct or indirect change in the quality or quantity of water delivered to CV Contractors, and the water supply source(s) and means of conveyance would remain unchanged, no cumulative impacts would occur to surface water resources in the Project Area. (Draft EIR, page 4.4-27.) As for groundwater, the proposed Project could indirectly provide short-term relief to groundwater levels and quality through discouragement of groundwater pumping by CV Contractors, though no cumulative effects on groundwater resources are anticipated. (Draft EIR, page 4.4-27.)

Comment Letter 4

From: [Eric Limas](#)
To: [Chris Mynk](#)
Subject: [EXTERNAL]:Fwd: Dropbox link
Date: Friday, September 3, 2021 12:53:43 PM
Attachments: [CVC environmental statement on CVC enlargement.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank You,

Eric Limas
General Manager
Lower Tule River and Pixley Irrigation Districts
Tea Pot Dome Water District
Tel: 559-686-4716

----- Forwarded message -----

From: **Jeevan Muhar** <jmuhar@aebsd.org>
Date: Sat, Aug 14, 2021 at 7:54 AM
Subject: RE: Dropbox link
To: Eric Limas <elimas@ltrid.org>

Got it.

You should have it now.

While the Friant proposal isn't "final", to completely ignore it and not mention it doesn't sit well.

I would think you can come up with language that references the proposed program and its potential to be adopted but the default is "then-current".

The original CVC EIR (attached) mentioned a leaching need – and there is nothing in that regard for the current Draft EIR.

Let me know.

Jeevan Muhar, P.E.
Engineer-Manager
Arvin-Edison Water Storage District
PO Box 175
Arvin, CA 93203

661-854-5573 office phone
661-854-5213 office fax
661-747-0062 mobile phone

email: jmuhar@aebsd.org



From: Eric Limas <elimas@ltrid.org>
Sent: Friday, August 13, 2021 3:01 PM
To: Jeevan Muhar <jmuhar@aebsd.org>
Subject: Dropbox link

You should be getting an email with a Dropbox link to upload the document. Let me know once you upload it. Thanks.

Thank You,

Eric Limas

General Manager

Lower Tule River and Pixley Irrigation Districts

Tea Pot Dome Water District

Tel: 559-686-4716

conditions are compared and contrasted with conditions that would exist once the Project is implemented. The significance of each identified impact was determined using CEQA thresholds informed by local thresholds of significance. The following categories are used for classifying impacts:

- **Significant and Unavoidable:** Significant impacts that cannot be feasibly mitigated or avoided. No measures could be taken to avoid or reduce these adverse effects to achieve insignificant or negligible levels. Even after application of feasible mitigation measures, the residual impact would be significant. If the project is approved with significant and unavoidable impacts, decision-makers are required to adopt a Statement of Overriding Considerations pursuant to CEQA Guidelines Section 15093 explaining why benefits of the project outweigh the potential damage caused by these significant unavoidable impacts.
- **Less than Significant with Mitigation:** Such impacts can be reduced to a less-than-significant level with feasible mitigation, which can include incorporating changes to the project. If the proposed project is approved with significant but mitigable impacts, decision-makers are required to make findings pursuant to CEQA Guidelines Section 15091, stating that impacts have been mitigated to the maximum extent feasible and the residual impact would not be significant.
- **Less than Significant:** These adverse but less-than-significant impacts do not require mitigation, nor do they require findings be made.
- **No Impact:** Such impacts are considered to not exist with the implementation of the proposed project or have been found to not apply to the proposed project.

1.6 - Notice of Preparation

The contents of this Draft EIR were established based on the findings in the NOP and attached materials, as well as public and agency input during the scoping period. The LTRID issued the NOP on October 5, 2020 and requested comments on the scope of the EIR. The NOP was circulated to relevant agencies, community organizations, and interested individuals. A public scoping workshop was held on October 26, 2020; a 30-day public comment period closed November 4, 2020 (CEQA Guidelines Section 15082). ¹ A copy of the NOP and comments received during the NOP comment period are included in Appendix A. ²

1.7 - Public Review of the Draft EIR

Upon completion of this Draft EIR, the LTRID prepared and filed a Notice of Completion (NOC) with the California Office of Planning and Research/State Clearinghouse to begin the public review period (Pub. Resources Code, Section 21161). Concurrent with the NOC, the LTRID distributed a Notice of Availability (NOA) in accordance with Section 15087 of the CEQA Guidelines. The NOA was mailed to the organizations and individuals who previously requested such a notice to comply with Public Resources Code Section 21092(b)(3). This Draft EIR was distributed to the California Office of Planning and Research/State Clearinghouse to comply with Section 15087 of the CEQA Guidelines and was distributed to affected agencies, surrounding cities and municipalities, and all interested parties. During

 Number: 1 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:30:55 AM

 Number: 2 Author: jmuhar Subject: Sticky Note Date: 4/26/2021 9:59:01 AM
not included

1 No Potential for Impacts to Occur

Potential environmental effects of the Project and mitigation measures are discussed in detail in Chapter 4 of this EIR. After full analysis, the following effects were determined to have no potential for impacts to occur:

Biological Resources

- Impact 4.1-1: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.
- Impact 4.1-2: Interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.
- Impact 4.1-3: Conflict with provisions of an adopted habitat conservation plan, natural communities conservation plan, or other approved local, regional, or State habitat conservation plan.

Energy

- Impact 4.2-2: Conflict with or obstruct a State or local plan for renewable energy or energy efficiency.

Hydrology and Water Quality

2

- Impact 4.4-1: **3** Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality.
- Impact 4.4-2: Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the Project may impede sustainable groundwater management of the basin.
- Impact 4.4-3(i): Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious surfaces, in a manner which would result in substantial erosion or siltation on- or off-site.
- Impact 4.4-3(ii): Substantially alter the existing drainage pattern of the site or area, including the alteration of the course of a stream or river or through the addition of impervious surfaces, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site.
- Impact 4.4-3(iii): Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious surfaces, in a manner which would create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.
- Impact 4.4-3(iv): Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the

 Number: 1 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:35:16 AM

 Number: 2 Author: jmuhar Subject: Sticky Note Date: 7/14/2021 12:20:55 PM
review AE comment from prior draft but this could be a good place to reference the Friant proposal

 Number: 3 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:35:33 AM

4- B

1.9.1 - ALTERNATIVES CONSIDERED AND EVALUATED

- *Alternative A – No Project (No Water Delivery).* This alternative assumes that no CVP water delivery will take place to the CV Contractors, no exchanges would occur, and there would be no mechanism for conveyance of water to the CV Contractors. This alternative would increase the demand of groundwater pumping, which would be in conflict with implementation of the Sustainable Groundwater Management Act (SGMA) and would ultimately result in the fallowing of significant acreage currently in production.
- *Alternative B – No Project (No Use of SWP Facilities).* This alternative assumes that there will be no contract between the CV Contractors, DWR, and Reclamation to convey the CVP supply to the CV Contractors through the Aqueduct. The CV Contractors would have to rely on other facilities or arrangements to convey their CVP water supply from the Delta. This alternative would create uncertainty in the water supply for CV Contractors and may lead to increased reliance on groundwater supplies and fallowing of agriculture land. This in turn, represents a greater impact to the region's groundwater supply than with the proposed Project.
- *Alternative C – Short-Term Conveyance to Use SWP Facilities.* This alternative would generate additional costs and delays for negotiating one or more of these agreements per year, require additional CEQA review, and create substantial uncertainty in the timing and delivery of available water supply.
- *Alternative D – Use of Long-Term SWP Contracts to Convey Water on Behalf of SWP Contractor.* Under this alternative, agreements would be negotiated for each exchange or transfer with tremendous variability within a year and between years due to a limited number of potential SWP partners in any given year. This alternative would generate additional costs for negotiating the transfer or exchange agreements and environmental compliance.
- *Alternative E – Short-Term Conveyance Obligations.* This alternative would have negative direct effects on groundwater because the CV Contractors would likely increase groundwater pumping for water supply.

1.10 - Environmentally Superior Alternative

CEQA requires that LTRID identify an Environmentally Superior Alternative. The proposed Project is considered the environmentally superior alternative because it has no significant environmental impacts and meets all project objectives. Failure to secure conveyance under the *Alternative A* (no water delivery) and *Alternative B* (because a long-term conveyance contract is not available) creates uncertainty in the water supply for CV Contractors and may lead to increased reliance on groundwater supplies. This represents a greater impact to the region's groundwater supply than with the proposed Project. *Alternative C* and *Alternative D* each would have negative direct effects on air quality, greenhouse gas emissions, and surface water and groundwater supplies. *Alternative E* would have negative direct effects on groundwater because the CV Contractors would likely increase groundwater pumping for water supply. None of these alternatives would further reduce impacts beyond the proposed Project. In summary, the proposed Project does not have any significant impacts in which an alternate would reduce; therefore, the proposed Project is environmentally superior.

 Number: 1 Author: arsaf Subject: Sticky Note Date: 8/11/2021 6:04:17 PM
Mitigation would be provided if alternative adopts Friant proposal.

 Number: 2 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:37:50 AM

4- B
Cont.

**Table 1-1
Comparison of Alternatives**

Affected Resource	Proposed Project Long-term Conveyance Contract		Alternatives									
			Alternative A No Project (No Water Delivery)		Alternative B No Project (No Use of SWP Facilities)		Alternative C Short-Term Conveyance to Use SWP Facilities		Alternative D Use of Long-Term SWP Contracts to Convey Water on Behalf of SWP Contractor		Alternative E Short-Term Conveyance Obligations	
Impacts	Direct	Indirect	Direct	Indirect	Direct	Indirect	Direct	Indirect	Direct	Indirect	Direct	Indirect
Agriculture	No Impact	No Impact	No Change	Increased Impact	No Change	Increased Impact	No Change	Increased Impact	No Change	Increased Impact	No Change	Increased Impact
Air Quality	No Impact	No Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact
Biological	No Impact	No Impact	No Change	No Change	Increased Impact	Increased Impact	No Change	No Change	No Change	No Change	No Change	No Change
Greenhouse Gas Emissions	No Impact	No Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact
1 Hydrology and Water Quality	No Impact	No Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact
Tribal Resources	No Impact	No Impact	No Change	No Change	Increased Impact	Increased Impact	No Change	No Change	No Change	No Change	No Change	No Change

Increased Impact = Impacts are expected to increase in severity when compared to the Proposed Project.

No Change = There would be no change in the level of impact significance when compared to the Proposed Project. Impacts would essentially be the same as those identified for the Proposed Project.

No Impact = There would be no significant impacts associated with the alternative if it were to be implemented.

Number: 1 Author: jmuhar Subject: Sticky Note Date: 7/14/2021 12:22:43 PM
correct?

no impact with mitigation from Friant proposal

4- B
Cont.

1.13 - ¹Areas of Controversy ²

Areas of controversy are identified through written agency and public comments received during the scoping period. One comment letter was received from the Native American Heritage Commission (NAHC), dated October 5, 2020, recommending consultation with California Native tribes that are traditionally and culturally affiliated with the geographic area of the proposed Project to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

- ³ While no comment was received during the scoping period for this Project regarding water quality, in the past certain agencies have expressed concerns regarding the delivery of CVP water to the CV Contractors relating to water quality. Areas of controversy generally include that CVP water delivered through the Delta differs in quality from CVP water delivered through Millerton Lake. ⁴ However, as noted the Project is a continuation of baseline activities: the Project allows the CV Contractors to continue to receive CVP water in the manner consistent with current and historical practices.

The Center for Biological Diversity, Restore the Delta, and Planning and Conservation League have challenged Reclamation's conversion of certain water service contracts under the WIIN Act under the National Environmental Policy Act and the Administrative Procedure Act. The litigation commenced on May 20, 2020 in the United States District Court for the Eastern District of California and is ongoing. None of the CV Contractors are parties in that case.

1.14 - Issues to be Resolved ⁵

Section 15123(b)(3) of the CEQA Guidelines requires that an EIR contain issues to be resolved, which includes the choices among alternatives and whether or how to mitigate significant impacts. The major issues to be resolved regarding the Project include decisions by the Lead Agency as to whether:

- The Draft EIR adequately describes the environmental impacts of the Project; or
- Mitigation measures should be adopted or modified.

 Number: 1 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:38:40 AM

 Number: 2 Author: jmuhar Subject: Sticky Note Date: 7/14/2021 12:23:55 PM
water quality?

4- B
Cont.

could reference Friant proposal

 Number: 3 Author: jmuhar Subject: Sticky Note Date: 8/13/2021 9:22:41 AM
sentence needs to reflect comments were received

4- C

 Number: 4 Author: jmuhar Subject: Highlight Date: 7/14/2021 12:23:22 PM

 Number: 5 Author: jmuhar Subject: Sticky Note Date: 4/23/2021 9:39:43 AM
what are they?

4- D

2.4.2 - SCOPING MEETING

Pursuant to Section 15206 of the CEQA Guidelines, the Lead Agency is required to conduct at least one scoping meeting for all projects of statewide, regional, or area-wide significance. The scoping meeting is for jurisdictional agencies and interested persons or groups to provide comments regarding, but not limited to, the range of actions, alternatives, mitigation measures, and environmental effects to be analyzed. In accordance with current social distancing guidance related to COVID-19, LTRID hosted a virtual scoping meeting at 11:00 a.m. on October 26, 2020, via Zoom Video Communications.

NOP and Scoping Meeting Results

1

2 One comment letter was received from the NAHC, dated October 5, 2020, recommending consultation with California Native tribes that are traditionally and culturally affiliated with the geographic area of the proposed Project to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

No individuals presented oral comments during the October 26, 2020 scoping meeting. The NOP is included in Appendix A, along with the Summary of Proceedings from the scoping meeting.

2.5 - Availability of the Draft EIR

This Draft EIR is being distributed directly to agencies, organizations, and interested groups and persons for comment during a 45-day formal review period in accordance with Section 15087 of the CEQA Guidelines. This Draft EIR for the Project, including all studies and reference documents, is available for review, by appointment, during normal business hours Monday through Friday at the LTRID office, located at:

Lower Tule River Irrigation District
357 East Olive Avenue
Tipton, CA 93272
Phone: (559) 686-4716

2.6 - Format and Content

This Draft EIR addresses the potential environmental effects of the Project and was prepared following input from the public and the responsible and affected agencies, through the EIR scoping process, as discussed previously. The contents of this Draft EIR were established based on the findings in the NOP and public and agency input. Based on the findings of the NOP, a determination was made that an EIR was required to address potentially significant environmental effects on the following resources:

- Biological Resources
- Energy
- Greenhouse Gas Emissions
- Hydrology and Water Quality
- Wildfire
- Tribal Cultural Resources

 Number: 1 Author: arsaf Subject: Sticky Note Date: 8/11/2021 6:08:40 PM
Reference AEWSO November 4, 2020 comment letter on the NOP.

 Number: 2 Author: jmuhar Subject: Highlight Date: 8/11/2021 6:06:38 PM

2.8 - Incorporation by Reference

In accordance with Section 15150 of the CEQA Guidelines, to reduce the size of the report, the following documents are hereby incorporated by reference into this Draft EIR and are available for public review at the LTRID District Office. A brief synopsis of the scope and content of these documents is provided below.

2.8.1 - RECLAMATION- POLICY FOR ACCEPTING NON-PROJECT WATER INTO THE FRIANT-KERN AND MADERA CANALS WATER QUALITY MONITORING REQUIREMENTS

This policy document describes the approval process, implementation procedures, and responsibilities of a contractor requesting permission from Reclamation to introduce non-project water into the FKC and Madera Canals, features of the Friant Division of the CVP. The monitoring requirements contained herein are intended to ensure that water quality is protected and that domestic and agricultural water users are not adversely impacted by the introduction of non-project water. The discharge of non-project water shall not in any way limit the ability of either Reclamation or the Friant Water Authority (FWA) to operate and maintain the Canals for their intended purposes nor shall it adversely impact existing contracts or any other agreements. The discharge of non-project water into the Canals will be permissible only when there is excess capacity in the system as determined by FWA and or Reclamation.

2.8.2 - FRIANT-KERN CANAL/CROSS VALLEY CANAL INTERTIE OPERATING AGREEMENT

This agreement was made and entered into effect on April 23, 2010, by and among the FWA and the Kern County Water Agency (KCWA). Per the agreement FWA shall allow KCWA to deliver water through the CVC/FKC Intertie to or from the FKC for approved deliveries to the terms and conditions of the Friant Division water service contracts, the transfer agreement and the Friant operational guidelines.

2.8.3 - FRIANT OPERATIONAL GUIDELINES

The purpose of these guidelines is to establish the procedures to be used in managing the water supplies of the Friant Division, CVP. The intent is to define and set forth the priority of water service, water scheduling, and proration guidelines used in the Friant Division Service Area so that the water supplies may be optimized and managed efficiently system-wide and in compliance with the water service contracts and the operations and maintenance agreement(s) between the United States and the operating non-federal entity.

2.8.4 - FRIANT WATER AUTHORITY, FRIANT-KERN CANAL: CANAL OPERATIONS

This document gives a detailed description of the FKC and its facilities and operations procedures including operating instructions, water operations/canal system operators, water order, filling limits, draw down limits, water surface elevations, alarms, water measurements, water delivery discrepancies, well water/supplemental flows, reverse flow, water accounting/reports and emergency procedures.

Number: 1 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:44:09 AM

Number: 2 Author: jmuhar Subject: Sticky Note Date: 8/13/2021 9:24:37 AM
area of controversy?

need to reference then current but also Friant proposal

original CEQA mentioned Delta salts and need to leach!!

also need to reflect Friant proposal reflects the Millerton vs Non-Millerton quality. As such, mention of Project vs Non-Project with regards to water quality need to be removed.

4- F

Number: 3 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:44:31 AM

Number: 4 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:44:46 AM

Number: 5 Author: jmuhar Subject: Sticky Note Date: 8/13/2021 10:20:46 AM

This section should reference that agreement language that ..."delivery of water into the FKC shall be consistent with the terms of Reclamation's policies, including but not limited to, water quality monitoring, measurement, and compliance with all applicable State and Federal laws and regulations."

4- G

¹Quality concern is addressed with respect to AEWSD in Article 9(c) of the CVC Operating Agreement², to which AEWSD is a party, which provides:  ²

“Use of the Intertie for delivery of water from the Cross Valley Canal to the Friant-Kern Canal may result in adverse water quality impacts to Arvin-Edison. Due consideration for such impacts shall be negotiated between those Participants desiring to introduce water into the Friant-Kern Canal and Arvin-Edison; provided, however, no such consideration shall be due with respect to any water provided under existing contracts and renewals thereof between Rag Gulch, Kern-Tulare and the Fresno-Tulare Group and the United States for providing for deliveries from the California Delta or Rag Gulch or Kern-Tulare supplies delivered pursuant to federal approval.”

Further, Reclamation’s Policy for Accepting Non-Project Water into the Friant-Kern and Madera Canals, dated March 7, 2008 (³“Water Quality Policy”), governs water quality related to the introduction of all water into the FKC. The policy’s purpose is “to ensure that water quality is protected” in the FKC. Pursuant to the policy there are various, different water quality requirements depending on the source and quality of water. Pursuant to the terms of the Water Quality Policy, the delivery of CVP water into the FKC is not subject to the Water Quality Policy, as the ⁴policy only applies to non-project water. Project water—from whatever part of the CVP including from the Delta—requires no additional evaluation beyond that already performed under the policy. ⁵Under the Water Quality Policy, “water pumped from the California Aqueduct and Cross Valley Canal into the lower Friant-Kern Canal” is an example of water that does not require additional water quality analysis. Under the Water Quality Policy, the reason that no additional water quality analysis over that which is already conducted for Project water is required in order to convey such water through the Friant-Kern Canal is ⁶because it is physically the same as Project water.” The Project is and will remain subject to all applicable water quality standards and conditions.  ⁷

3.3.3 - STATE WATER PROJECT WATER FACILITIES

Water is conveyed from the Delta by the State of California using SWP facilities. Diversion occurs at the Clifton Court Forebay, then flows through the Banks Pumping Plant into the Aqueduct. The Aqueduct is a feature of the SWP and is operated by DWR. The first portion of the Aqueduct extends to O’Neill Forebay, where water can be pumped into San Luis Reservoir, which is a joint-use facility shared between DWR and Reclamation. The segment of the Aqueduct between the O’Neill Forebay and the State Highway 41 Bridge near Kettleman City, known as the San Luis Canal, is also a joint-use facility (see Figure 3-3). Water conveyed in this section are to both CVP and SWP contractors. The SWP facilities continues south from the State Highway 41 Bridge to storage and distribution facilities in Kings and Kern counties and south to the greater Southern California area.

² Contract Among Kern County Water Agency and Various Parties for the Operation of the Cross Valley Canal Extension and Intertie.

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Article 9(c) exception does not apply to converting water supply contracts with the United States or renewing conveying contracts with the State of California, which comprise the Project.

4- H

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 Number: 4 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:49:37 AM

 Number: 5 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:49:47 AM

 Number: 6 Author: jmuhar Subject: Highlight Date: 4/23/2021 9:49:56 AM

 Number: 7 Author: jmuhar Subject: Sticky Note Date: 7/14/2021 12:38:15 PM
reference to then current and mention friant proposal

4- I

- The approval and execution of a contract with Reclamation that converts, pursuant to the WIIN Act, the CV Contractor's existing water supply contract for CVP water to a repayment contract authorizing prepayment of outstanding CVP construction costs; and
- The approval and execution of a contract with Reclamation and DWR that renews and updates the terms of an existing contract for the conveyance of the CV Contractor's CVP water until 2035.

The proposed conversion of the existing CVP contracts under the WIIN Act, and renewal and updating the conveyance provisions of the existing contracts into separate conveyance contracts, will allow the CV Contractors to continue receiving CVP water in the manner consistent with current and historical practices.

3.5.1 - PROJECT COMPONENTS

There are numerous regulatory constraints in the Delta that control the timing and quantity of water that is pumped through CVP and SWP facilities. These constraints have changed significantly since the initial three-party contracts were signed in the mid-1970s. The Project will operate under the current and future pumping and related constraints including:

- Delta Outflow requirements,
- X2 location criteria,
- Export pumping rates,
- Operations criteria for the federal and State pumps, and
- Fish "take" numbers.



The term of the proposed conveyance contract extends to February 28, 2035. The proposed conveyance contract, accounting for pumping constraints, allows DWR to continue to convey water through unused capacity in SWP facilities for the CV Contractors.

The proposed Project assumes that annually up to the full aggregate contract quantity of all CV Contractors' contracts, up to 128,300 acre-feet (af), will continue to be conveyed by DWR through SWP facilities, when conveyance capacity and CVP water supply are available. The CVP water is provided to CV Contractors through either direct delivery (into the FKC using the CVC/FKC Intertie, then using the FKC Check Structures to move the water upstream to CV Contractors) or exchange agreements negotiated by the CV Contractors. The Project would enable continued future deliveries of CVP water in the manner consistent with current and historical practices.

3.6 - Entitlements Required

LTRID is the Lead Agency for the proposed Project, consistent with CEQA Guidelines Section 15051(b). This EIR will be used by LTRID to both evaluate the potential environmental impacts that could result from implementation of the Project and develop changes in the proposed Project and/or adopt mitigation measures which would address those impacts.

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add friant proposal?

4- J

through a bed or channel having banks and supporting fish or other aquatic life. Altered or artificial watercourses valuable to fish and wildlife may be subject to CDFW jurisdiction. CDFW also has jurisdiction over dry washes that carry water during storm events. Preliminary notification and project review generally occur during the environmental process. When an existing fish or wildlife resource may be substantially adversely affected, CDFW is required to propose reasonable project changes to protect the resource. These modifications are formalized in a Streambed Alteration Agreement.

Sections 3503 and 3503.5

Under these sections of the California Fish and Game Code, the project proponent is not allowed to conduct activities that would result in the taking, possessing, or destroying of any birds-of-prey, taking or possessing of any migratory non-game bird as designated in the MBTA or the taking, possessing, or needlessly destroying of the nest or eggs of any raptors or non-game birds protected by the MBTA, or the taking of any non-game bird pursuant to CDFW Code Section 3800.

Sections 3511, 4700, 5050, and 5515

Protection of fully protected species is described in Sections 3511, 4700, 5050, and 5515 of the FGC. These statutes prohibit take or possession of fully protected species. CDFW is unable to authorize incidental take of fully protected species, except as allowed for an approved Natural Communities Conservation Plan (NCCP), or through direct legislative action.

SECTIONS 1900 THROUGH 1913 - NATIVE PLANT PROTECTION ACT

California's Native Plant Protection Act (NPPA) requires all State agencies to use their authority to carry out programs to conserve endangered and rare native plants. Provision of the NPPA prohibit that taking of listed plants from the wild and require notification of CDFW at least 10 days in advance of any change in land use. This allows CDFW to salvage listed plant species that otherwise would be destroyed. A project proponent is required to conduct botanical inventories and consult with CDFW during project planning to comply with the provisions of this Act and sections of CEQA that apply to rare or endangered plants.

PORTER-COLOGNE WATER QUALITY CONTROL ACT

The Regional Water Quality Control Board (RWQCB) regulates waters of the State under the authority of the Porter-Cologne Water Quality Control Act (Porter Cologne Act), including all ground and surface water within State boundaries. The RWQCB requires that projects avoid impacts to wetlands whenever feasible and requires that projects do not result in a net loss of wetland acreage or a net loss of wetland function and values. The RWQCB typically requires compensatory mitigation for impacts to wetlands and/or waters of the State. Dredging, filling, or excavation of isolated waters constitutes a discharge of waste into waters of the State, and such discharges are authorized through an Order of Waste Discharge (or waiver of discharge) from the RWQCB.

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Antidegradation Policy?

4-K

4.1.4 - IMPACTS AND MITIGATION MEASURES 1

Methodology

The impact assessment for aquatic wildlife species relied upon knowledge of aquatic resource habitat requirements and expected changes to habitat or population from implementation of the proposed Project.

Impacts on terrestrial biological resources were qualitatively evaluated using a vegetation/habitat-based approach that links predicted environmental effects of the proposed Project to potential effects on habitat quantity and quality. Effects on wildlife biological resources can be direct, as in the mortality of individual specimens, and indirect, as in effects that do not cause the immediate mortality of an individual but that may reduce the habitat or eliminate the species over time.

Biological Opinions for Coordinated operation of the CVP and SWP

Reclamation and the California Department of Water Resources (DWR) coordinate long-term operation of the CVP and SWP (CVP/SWP LTO). On July 30, 2004, the USFWS issued Biological Opinion 04-F-0140, which addressed the effects of operating the CVP/SWP and delivering CVP water for renewing water contracts and other actions on the threatened delta smelt (*Hypomesus transpacificus*). On February 15, 2005, USFWS issued Biological Opinion 1-1-05-F-0055 in response to Reclamation's November 3, 2004 request for reinitiation of formal consultation on the CVP/SWP LTO to further address effects on delta smelt critical habitat.

On April 7, 2006, NMFS listed the southern distinct population segment of North American green sturgeon (*Acipenser medirostris*) as threatened under the ESA. Because this newly listed species had not been consulted on under Section 7 of the ESA, Reclamation requested that the NMFS consultation on CVP/SWP LTO be reinitiated. Because of the potential for that consultation to affect species under the USFWS' jurisdiction, and because of the Pelagic Organism Decline, which began in 2002, Reclamation requested that the USFWS also reinitiate consultation on delta smelt. This request was received by the USFWS on July 6, 2006.

Biological opinions were issued by NMFS (2009b) and USFWS (2008) for the effects of CVP/SWP LTO. The NMFS opinion found that the proposed operations were likely to jeopardize several species and result in adverse modification of their critical habitat. The USFWS found that proposed operations were likely to jeopardize the continued existence of delta smelt and adversely modify its critical habitat. The USFWS provided a Reasonable and Prudent Alternative (RPA) with five Final EA CGB-EA-2021-007 25 components. On December 15, 2008, Reclamation submitted a memo provisionally accepting the RPAs developed by the USFWS and included in the CVP/SWP LTO Opinion. The provisional acceptance of the RPA was conditioned upon the further development and evaluation of the two RPA components directed at habitat. Reclamation stated that the two RPA components, RPA Component 3 – the fall action, and RPA Component 4 – the tidal habitat restoration

Number: 1 Author: jmuhar Subject: Sticky Note Date: 7/14/2021 12:45:30 PM
add reference to friant proposal

4.4 - Hydrology and Water Quality

4.4.1 - INTRODUCTION

This section addresses hydrology and water quality impacts that are associated with the Project. The following discussion addresses existing environmental conditions in the affected environment, evaluates the proposed Project's consistency with applicable goals and policies, identifies and analyzes environmental impacts, and recommends measures to reduce or avoid adverse impacts anticipated from proposed Project implementation.

A description of the environmental setting (affected environment) for hydrology and water quality is presented below in Section 4.4.2, *Environmental Setting*, including discussion of water supply and service providers. The regulatory setting applicable to the Project is presented in Section 4.4.3, *Regulatory Setting*, while the Project impacts and associated mitigation measures are analyzed in Section 4.4.4, *Impacts and Mitigation Measures*.

4.4.2 - ENVIRONMENTAL SETTING

For the purpose of defining the affected surface water environment of the proposed Project, the Project Area is generally defined as the eastern SJV, including the conveyance system facilities and the service areas of the CV Contractors, as well as the areas that could receive water under the proposed Project (as described Chapter 3 of this DEIR). The CVC is a water conveyance facility in the southern SJV that extends from the Aqueduct near Tupman, east to the FKC and beyond. The CVC can convey water to the CV Contractors' turnouts along the FKC, on the east side of the SJV. The CV Contractors are located within Fresno, Kings, Tulare, and Kern counties. DWR operates the SWP, with facilities available for conveyance of CVP water for CV Contractors when unused capacity is present, located in Central California from Clifton Court Forebay south to the Aqueduct's connection with the CVC.

Hydrologic Area Climate

The SJV is that portion of the Central Valley south of the Delta. The climate is arid-to-semiarid hot, Mediterranean. Precipitation during an average year ranges from five to 18 inches in the SJV, generally increasing from south to north and west to east. Dramatic deviations from average climatic conditions are manifested as droughts or floods. Most of the Central Valley is prone to flooding. About 85 percent of the precipitation falls during November through April. The SJV is hot and dry during the summer, and cool and damp in the winter, when the area frequently is covered by a ground ("tule") fog. Reference evapotranspiration (ET_o) is relatively high, and ranges from 49 inches in the northern SJV to 56 inches in the south. Because of these arid conditions, most of the valley is in a state of perennial water deficiency (Faunt, 2009).

Surface Water - Rivers and Lakes

The SJV is bounded to the north by the Delta, to the west by the Coast Ranges, to the east by the Sierra Nevada, and to the south by the Tehachapi Mountains. DWR (2009a) divides the

 Number: 1 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:06:14 AM

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if the Friant proposal is incorporated then this could stay as-is. Otherwise this section would need to be greatly supplemented to address existing water quality and analysis thereof

4- M

regulatory authority by CDPR and the county agricultural commissioners. In addition, SWRCB and the RWQCBs can employ Stage 4 and a variety of water quality control planning programs and other regulatory measures to protect water quality as necessary.

Surface Water Protection Program 1

CDPR implements the California Pesticide Management Plan for surface water protection through its Surface Water Protection Program, under a Management Agency Agreement with SWRCB. The Surface Water Protection Program is designed to characterize pesticide residues, identify contamination sources, determine flow of pesticides to surface water, and prepare site-specific mitigation measures. The program addresses both agricultural and non-agricultural sources of pesticide residues in surface waters. It has preventive and response components that reduce the presence of pesticides in surface waters. The preventive component includes local outreach to promote management practices that reduce pesticide runoff. Prevention also relies on CDPR's registration process, in which potential adverse effects on surface water quality, and particularly those in high-risk situations, are evaluated. The response component includes mitigation options to meet water quality goals, recognizing the value of self-regulating efforts to reduce pesticides in surface water as well as regulatory authorities of CDPR, SWRCB, and the RWQCBs.

Pesticide Contamination Prevention Act

The Pesticide Contamination Prevention Act (DPR, 2021), approved in 1985, was developed to prevent further pesticide contamination of groundwater from legal agricultural pesticide applications. The Act defines pesticide pollution as "the introduction into the groundwaters of the State of an active ingredient, other specified product, or degradation product of an active ingredient of an economic poison above a level, with an adequate margin of safety that does not cause adverse health effects." CDPR has compiled a list of pesticide active ingredients on the Groundwater Protection List that have the potential to pollute groundwater. These various pesticides are reviewed, and their use is modified when they are found in groundwater.

Groundwater Protection Program

CDPR implements the Pesticide Contamination Prevention Act through its Groundwater Protection Program, which is coordinated with SWRCB under the California Pesticide Management Plan. The Groundwater Protection Program evaluates and samples pesticides to determine whether they may contaminate groundwater, identifies areas sensitive to pesticide contamination, and develops mitigation measures to prevent the movement of pesticides. CDPR may adopt regulations to carry out these mitigation measures. CDPR conducts four groundwater monitoring programs. The first monitors whether pesticides on the Groundwater Protection List with the potential to pollute have been found in groundwater. The second type is four-section monitoring, which monitors wells in the vicinity of a contaminated well. The third monitoring type is sensitive area monitoring that identifies areas sensitive to pesticide pollution. The fourth type is investigative monitoring,

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need a reference to then current policy and friant proposal somewhere in this section

4- N

1

2 The quality of water delivered to the CV Contractors. The water supply source(s) would remain the same, as would the means and methods of conveyance. Potential sources of contaminants, such as accidental spills or leaks into the conveyance system or source water, would be similar to those under existing conditions. The potential for source water to infiltrate to groundwater would remain the same. It is possible that the CV Contractors' supply could be exchanged to supplement existing groundwater banking facilities. 3 Given the relatively high quality of the CVP water, use of the water for recharge may result in increased quality of groundwater supply in some situations. The introduction of CVP water allocated under the CV contracts into the FKC could reduce the relative quality of the FKC water depending on if there is any comingling of the CVP water delivered through the Delta and CVP water delivered through Millerton Lake. The practice of occasionally introducing CVP water allocated under the CV contract and delivered through the Delta into the FKC is a long-standing practice that has historically occurred and is a baseline project condition. As outlined below, the FWA's canal operations procedures expressly include the introduction of such water into the southern end of the FKC and moving it by "reverse flow" north over a series of checks for delivery to contractors. 5

4

The FKC is part of the Friant Division of the CVP and conveys water from Millerton Lake on the San Joaquin River south to Kern River near Bakersfield. The FKC is owned by Reclamation but, since October of 1986, is operated and maintained by the FWA, which is termed the "non-federal operating entity" in applicable Reclamation contracts.

Water deliveries via the FKC are made pursuant to water service and repayment contracts and based on hydrologic supply and district demands. Water is typically delivered south by gravity flow from Millerton Lake. Alternatively, water may be delivered to contractors from other sources such as from the Delta and pumped into the FKC. Such deliveries frequently introduce water into the FKC near its southern end at its intertie with the CVC and may then be pumped from lower reaches of the FKC to its upper reaches. This upstream flow ("reverse flow") is accomplished by operating pumps at selected checks to lift the water from the downstream side of the check, over the check, to the upstream side of the check. One such reach is created by the Shafter Check Structure at FKC Milepost 137.2, where a permanent 30 cubic feet per second ("cfs") pump is located and where FWA installs and operates it and other temporary pumps as needed. Other similar reaches further north are created by the Poso Check and the Lake Woollomes Check, where FWA installs temporary pumps as conditions warrant to facilitate delivery of water further north in the FKC. If all three checks are operated in reverse, water can be conveyed north from the CVC to KTWD, the southern-most CV Contractor.

Reverse flow operation of the FKC, as discussed above and where water is introduced to the FKC at its southern end from the CVC and other sources and pumped north, is part of FWA's canal operations procedures, which provide:

"Reverse flow

Water contractors with facilities that tie into the FKC within the reaches upstream of the Kern Check can introduce supplemental flows into the system and reverse flow

 Number: 1 Author: jmuhar Subject: Sticky Note Date: 4/23/2021 10:12:47 AM
what about delivery to others?

4- O

 Number: 2 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:12:30 AM

 Number: 3 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:13:34 AM

 Number: 4 Author: jmuhar Subject: Sticky Note Date: 7/14/2021 1:00:11 PM
however, cvc agrees to then current policy and friant proposal

4- P

 Number: 5 Author: jmuhar Subject: Sticky Note Date: 7/14/2021 1:01:19 PM
only kern tulare or pixley at most?

4- Q

these deliveries upstream as far as Lake Woollomes. Historical introductions have been by means of siphons in the Kern Check along with pumps within the Shafter and Poso Checks. The addition of the bi-directional intertie with the Cross Valley Canal allows water to be directly introduced into the FKC within the Kern Check. This intertie was installed and approved under USBR guidelines. All water coming into the FKC is metered for flow rate accuracy and totalized for quantity. Reverse flow introductions in the FKC are either diverted to contractors within the pumped-in reach or pumped over the upstream check structure in order to satisfy demand. Reverse flow pump installations may be installed at the Shafter, Poso, and Reservoir Check Structures to further reverse flow any water in excess of each check's demands. All flows introduced into the FKC are coordinated through the FWA Water Operations Department, USBR, introducing contractors, and receiving contractors."

Reclamation's water deliveries in the region are further made to its contractors pursuant to the terms of the (1) *The United States Department of the Interior Bureau of Reclamation South-Central California Area Office Operational Guidelines for Water Service Friant Division Central Valley Project*, (2) *CVC Operations Manual*, and (3) *the Friant Operational Guidelines*. The Project is and will remain subject to these standards and conditions.

This reverse flow operation has been historically, and presently is, used to move CVP water from the CVC to Friant Division contractors or some of the CV Contractors, such as KTWD. The long-standing practice introduces CVP water from the CVC with a typically higher total dissolved solids³ concentration than CVP water from Millerton, into the FKC. This water quality concern is addressed with respect to AEWS in the CVC Operating Agreement⁴, to which AEWS is a party.

¹Further, Reclamation's Policy for Accepting Non-Project Water into the Friant-Kern and Madera Canals, dated March 7, 2008 ("Water Quality Policy"), governs water quality related to the introduction of all water into the FKC. The policy's purpose is "to ensure that water quality is protected" in the FKC. Pursuant to the policy there are various, different water quality requirements depending on the source and quality of water. Pursuant to the terms of the Water Quality Policy, the delivery of CVP water into the FKC is not subject to the Water Quality Policy, as the policy only applies to non-project water. Project Water—from whatever part of the CVP including from the Delta—requires no additional evaluation beyond that already performed under the policy. Under the Water Quality Policy, "water pumped from the California Aqueduct and Cross Valley Canal into the lower Friant-Kern Canal" is an example of water that does not require additional water quality analysis. Under

³CVP water that moves through the Delta may include, among other things, sodium, chloride, and boron at relatively higher levels than CVP water that moves through Millerton. As outlined in the Water Quality Policy and discussed in more detail below, such water is analyzed in the FKC for "for Title 22 and many other constituents."

⁴Contract Among Kern County Water Agency and Various Parties for the Operation of the Cross Valley Canal Extension and Intertie.

 Number: 1 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:14:20 AM

 Number: 2 Author: jmuhar Subject: Sticky Note Date: 7/14/2021 1:03:40 PM
we will want to revise some of this language for example water is "physically" the same...

4-R

 Number: 3 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:14:23 AM

 Number: 4 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:14:26 AM

¹The Water Quality Policy, the reason that no additional water quality analysis over that which is already conducted for Project water is required in order to convey such water through the Friant-Kern Canal is “because it is physically the same as Project water.” The Project is and will remain subject to all applicable water quality standards and conditions.

Furthermore, the proposed Project would not result in the construction of any new facilities. No potential construction-related water quality impacts would occur. No changes over current conditions would occur as a result of the Project and implementation of the proposed Project would not result in any direct or indirect change in the quality of water delivered to the CV Contractors. ²The water supply source(s) would remain the same, as would the means and methods of conveyance. The proposed conversion of the CVP contracts and renewal of the conveyance contracts will merely allow the CV Contractors to continue receiving CVP water in the manner consistent with ongoing and historical practices. No direct or indirect impacts to water quality standards or discharge requirements would occur.

MITIGATION MEASURES

⁴No mitigation measures are required. ³

LEVEL OF SIGNIFICANCE

No impact.

Impact 4.4-2: Substantially Decrease Groundwater Supplies or Interfere Substantially with Groundwater Recharge Such That the Project May Impede Sustainable Groundwater Management of the Basin

The water districts strive to provide surface water at affordable prices to discourage groundwater pumping. However, due to nine years of drought (2011–2019), much of the SJV is in groundwater overdraft conditions. Quite often, CV Contractors and private landowners within water district boundaries have fewer water supply options and more quickly turn to pumping groundwater to meet their water demands. Fresno County Service Area (CSA) #34, KTWD, Alpaugh ID, and Atwell WD are located in areas with inadequate groundwater supplies and unsuitable for groundwater recharge in support of groundwater banking. Water districts located in the Kern County Basin have been exchange partners with the CV Contractors in the past and will likely continue to do so in the future because of the availability of groundwater storage facilities and conveyance facilities in Kern County. Therefore, groundwater supply could improve temporarily in Kern County. However, short of a dependable long-term supply, the contractors have water supply reliability issues that in turn, affect groundwater conditions. Water supply available under this Project is a part of each of the District’s SGMA Plans.

A benefit of the proposed Project is to ensure that water supplies continue to be conserved and used at maximum efficiency taking into consideration timing, availability, and variability of CVP and non-CVP water supplies. The proposed Project is needed to preserve

 Number: 1 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:14:34 AM

 Number: 2 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:14:57 AM

 Number: 3 Author: jmuhar Subject: Sticky Note Date: 7/14/2021 1:04:19 PM
revise with mention of friant proposal

 Number: 4 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:14:47 AM

4-S

Cumulative Setting Impacts and Mitigation Measures

CUMULATIVE IMPACTS

CEQA Guidelines Section 15130(a) states: An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in Section 15065(a)(3). Where a Lead Agency is examining a project with an incremental effect that is not "cumulatively considerable," a Lead Agency need not consider that effect significant but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

The issues for determination of a potential cumulative impact on surface water resources are those associated with water quality and quantity. Implementation of the proposed Project would not result in any direct or indirect change in the quality or quantity of water delivered to the CV Contractors. The water supply source(s) would remain the same as would the means of conveyance. Consequently, no cumulative impacts would occur to surface water resources of the CV Contractors in the Project Area.

Much of the SJV is in a state of overdraft. A portion of the water applied on irrigated lands seeps into the groundwater; however, groundwater seepage is slow and would not lower the expense of pumping groundwater. The CV Contractors strive to provide surface water at affordable prices to discourage groundwater pumping. The proposed Project could provide short-term relief to groundwater quality and quantity. No new water supplies would be added to this region; therefore, the proposed Project would have no impact on water resources as described previously. As such, no cumulative effects on groundwater resources in the Project Area are anticipated.

MITIGATION MEASURES

No mitigation measures are required.

1

CUMULATIVE LEVEL OF SIGNIFICANCE

Cumulative impacts would be *no impact*.

Greenhouse Gas Emissions

- Impact 4.3-1: Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.
- Impact 4.3-2: Conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

¹Hydrology and Water Quality ²

- Impact 4.4-1: ³Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality.
- Impact 4.4-2: Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the Project may impede sustainable groundwater management of the basin.
- Impact 4.4-3(i): Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious surfaces, in a manner which would result in substantial erosion or siltation on- or off-site.
- Impact 4.4-3(ii): Substantially alter the existing drainage pattern of the site or area, including the alteration of the course of a stream or river or through the addition of impervious surfaces, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site.
- Impact 4.4-3(iii): Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious surfaces, in a manner which would create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.
- Impact 4.4-3(iv): Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious surfaces, in a manner which would impede or redirect flood flows.
- Impact 4.4-4: In flood hazard, tsunami, or seiche zones, risk release of pollutants due to Project inundation.
- Impact 4.4-5: Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

Wildfire

- Impact 4.5-1: Substantially impair an adopted emergency response plan or emergency evacuation plan.
- Impact 4.5-2: Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose Project occupants to, pollutant concentration from a wildfire or the uncontrolled spread of a wildfire.
- Impact 4.5-3: Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities)

 Number: 1 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:15:49 AM

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make consistent with above

 Number: 3 Author: jmuhar Subject: Highlight Date: 4/23/2021 10:16:06 AM

4- U

**Table 6-1
Impacts from Implementation of each Alternative Compared to Proposed Project**

Affected Resource	Proposed Project		Alternatives									
			Alternative A No Project (No Water Delivery)		Alternative B No Project (No Use of SWP Facilities)		Alternative C Short-Term Conveyance to Use SWP Facilities		Alternative D Use of Long-Term SWP Contracts to Convey Water on Behalf of SWP Contractor		Alternative E Short-Term Conveyance Obligations	
			Direct	Indirect	Direct	Indirect	Direct	Indirect	Direct	Indirect	Direct	Indirect
Agriculture	No Impact	No Impact	No Change	Increased Impact	No Change	Increased Impact	No Change	Increased Impact	No Change	Increased Impact	No Change	Increased Impact
Air Quality	No Impact	No Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact
Biological	No Impact	No Impact	No Change	No Change	Increased Impact	Increased Impact	No Change	No Change	No Change	No Change	No Change	No Change
Greenhouse Gas Emissions	No Impact	No Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact
Hydrology and Water Quality	No Impact	No Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact	Increased Impact
Tribal Resources	No Impact	No Impact	No Change	No Change	Increased Impact	Increased Impact	No Change	No Change	No Change	No Change	No Change	No Change

1

Increased Impact = Impacts are expected to increase in severity when compared to the Proposed Project.
 No Change = There would be no change in the level of impact significance when compared to the Proposed Project. Impacts would essentially be the same as those identified for the Proposed Project.
 No Impact = There would be no significant impacts associated with the alternative if it were to be implemented.

Number: 1 Author: jmuhar Subject: Sticky Note Date: 8/13/2021 10:17:45 AM
review for consistency.

If a Friant policy/guidelines mitigation measure is added, I think the technical status of the relevant impact areas would be "less than significant with mitigation." On the other hand, if compliance with then-applicable policy/guidelines is somehow added as part of the project, I think the impacts designations could remain as is.

4- V

Response to Comment Letter 4: Arvin-Edison Water Storage District (August 16, 2021)

A. Response to Comment 4-A

The participation of Arvin-Edison Water Storage District (AEWSD) in the public review of this document is appreciated. The commenter provided a pdf copy of the DEIR with various sections highlighted in yellow and comments placed throughout the document. The commenter states a copy of the NOP was not included in the Draft EIR.

Thank you for your comment. In order to include the comments provided, the PDF version of the DEIR has been condensed to only those pages that included comments.

As noted above, in Section 7.1, a comment letter was inadvertently omitted from the Draft EIR. The NOP comment makes reference to water quality data that has been collected by AEWSD. However, the NOP comment did not provide such data, and comments regarding water quality concerns have been otherwise addressed in the FEIR.

B. Response to Comment 4-B

The commenter states the Draft EIR should reference the “Friant proposal”. The commenter further states mitigation should be provided to Alternative E, if the Friant proposal is adopted, and questions whether impacts would occur for Hydrology and Water Quality resources with the inclusion of mitigation from the Friant proposal. Additionally, the Commenter questions water quality as described in Section 1.13 (Areas of Controversy) of the DEIR.

Thank you for your comment.

Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. Global Response #4 specifically addresses concerns regarding the federal and State antidegradation policies. Because the proposed Project would not result in any direct or indirect change in the quality or quantity of water delivered to CV Contractors, and the water supply source(s) and means of conveyance would remain unchanged, the project merely continues operation of ongoing, baseline conditions.

As noted above in Section 7.2 and 7.3, language has been included in the FEIR to reference the *Draft* Friant-Kern Canal Water Quality Policy. The lead agency understands that Friant Water Authority has proposed a *Draft* Friant Water Quality Policy (Draft Policy). The Draft Policy is not final, nor is it presently in force and thus any analysis of environmental impacts as a result of the Draft Policy are speculative. As noted by Friant Water Authority in the Draft Policy when discussing “Additional Implementation Requirements,” Friant identifies “several programmatic

challenges...that will continue to be evaluated and addressed” including the need to “address FWA’s authority to implement the Policy. FWA’s role is limited to complying with Federal and State laws and cannot adopt its own regulations.” Friant also states the need evaluate and address the programmatic challenge of “identify[ing] all existing programs and pump-ins and determine which are exempt from the Policy.” As the Draft Policy is not final but instead contingent on further evaluation and addressing of issues, is not presently enforceable by Friant Water Authority, and has not been approved by Reclamation, any analysis of environmental impacts as a result of the Draft Policy would be speculative. However, no changes to the 2008 Water Quality Policy have been finalized, meaning the 2008 Water Quality Policy governs water quality related to the introduction of all water into the FKC. Actions taken pursuant to the proposed Project are and will be subject to all applicable laws and regulations, including Reclamation’s current 2008 Water Quality Policy. (Draft EIR, page 4.4-23 [“The Project is and will remain subject to all applicable water quality standards and conditions.”].)

Areas of controversy are addressed in Section 1.13 of the Draft EIR, as corrected per Section 7.3 of this chapter. Certain agencies have previously expressed concerns regarding the delivery of CVP water to the CV Contractors relating to water quality. Responses to water quality concerns are addressed in Global Responses #1-4 contained within this chapter. Global Response #4 addresses concerns specific regarding the federal and State antidegradation policies. Moreover, the proposed Project will not result in any impacts to water quality because the Project is a continuation of baseline activities, consistent with current and historical practices. (Draft EIR, page 1-19.)

C. Response to Comment 4-C

The commenter states the AESWD NOP comment letter was not included in the Draft EIR.

Thank you for your comment. Please see Response to Comment 4-A, above.

D. Response to Comment 4-D

The Commenter asks what are the issues to be resolved, as stated in Section 1.14 of the DEIR.

Thank you for your comment. The issues to be resolved, as stated in Section 1.14 of the DEIR, are noted as follows:

- The Draft EIR adequately describes the environmental impacts of the Project; or
- Mitigation measures should be adopted or modified.

E. Response to Comment 4-E

The commenter states the AESWD NOP comment letter was not included in the Draft EIR.

Thank you for your comment. Please see Response to Comment 4-A, above.

F. Response to Comment 4-F

The Commenter questions area of controversy with regard to the DEIR incorporation by reference of the 2008 *Reclamation – Policy for Accepting Non-Project Water into the Friant-Kern and Madera Canals Water Quality Monitoring Requirements*. The commenter states the DEIR needs to reference the Friant proposal, and the “original CEQA” with regard to Delta salts and the need to leach. Additionally, the commenter states DEIR needs to remove mention of Project vs. Non-Project with regard to water quality, due to Friant proposal reflecting Millerton vs. Non-Millerton quality.

Thank you for your comment. Please see Response to Comment 4-B for discussion on Areas of Controversy and the Friant proposal.

Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. Global Response #4 specifically addresses concerns regarding the federal and State antidegradation policies. Because the proposed Project would not result in any direct or indirect change in the quality or quantity of water delivered to CV Contractors, and the water supply source(s) and means of conveyance would remain unchanged, the project merely continues operation of ongoing, baseline conditions.

The lead agency understands that Friant Water Authority has proposed a *Draft* Friant Water Quality Policy (Draft Policy) . The Draft Policy is not final, nor is it presently in force and thus any analysis of environmental impacts as a result of the Draft Policy are speculative. As noted by Friant Water Authority in the Draft Policy when discussing “Additional Implementation Requirements,” Friant identifies “several programmatic challenges...that will continue to be evaluated and addressed” including the need to “address FWA’s authority to implement the Policy. FWA’s role is limited to complying with Federal and State laws and cannot adopt its own regulations.” Friant also states the need evaluate and address the programmatic challenge of “identify[ing] all existing programs and pump-ins and determine which are exempt from the Policy.” As the Draft Policy is not final but instead contingent on further evaluation and addressing of issues, is not presently enforceable by Friant Water Authority, and has not been approved by Reclamation, any analysis of environmental impacts as a result of the Draft Policy would be speculative. However, no changes to the 2008 Water Quality Policy—which discusses CVP Project Water and non-project water have been finalized, meaning the 2008 Water Quality Policy governs water quality related to the introduction of all water into the FKC. Actions taken pursuant to the proposed Project are and will be subject to all applicable laws and regulations. (Draft EIR, page 4.4-23 [“The Project is and will remain subject to all applicable water quality standards and conditions.”].)An excerpt from a Final

Environmental Statement, titled: *Use of Central Valley Project Water Through Enlarged Cross Valley Canal*, dated 1975, was provided by AEWS. The excerpted pages state water quality from enlarged Cross Valley water is “not expected to pose a problem to the users of such water”. Additionally, the Final Environmental Statement states that salts may be higher from imported water; however, the water is “excellent quality for irrigation” and may require a “small additional leaching increment to maintain proper soil salt levels.

G. Response to Comment 4-G

The Commenter states Section 2.8.2 of the DEIR should “reference that agreement language that....delivery of water into the FKC shall be consistent with the terms of Reclamation’s policies, including but not limited to, water quality monitoring, measurement, and compliance with all applicable State and Federal laws and regulations.”

Thank you for your comment. As noted throughout the DEIR, actions taken pursuant to the proposed Project are and will be subject to all applicable laws and regulations. (Draft EIR, page 4.4-23 [“The Project is and will remain subject to all applicable water quality standards and conditions.”].)

H. Response to Comment 4-H

The commenter states Article 9(c) exception does not apply to converting water supply contracts or renewing conveying contracts.

Thank you for your Comment. Responses to water quality concerns are addressed in Global Responses #1-4, contained within this chapter. Additionally, water quality concerns about reverse flow operations in the FKC are addressed with respect to AEWS in the Draft EIR on pages 4.4-21 through 4.4-22.

Moreover, Article 9(c) of the CVC Operating Agreement, to which AEWS is a party provides:

“Use of the Intertie for delivery of water from the Cross Valley Canal to the Friant-Kern Canal may result in adverse water quality impacts to Arvin-Edison. Due consideration for such impacts shall be negotiated between those Participants desiring to introduce water into the Friant-Kern Canal and Arvin-Edison; provided, however, no such consideration shall be due with respect to any water provided under existing contracts and renewals thereof between Rag Gulch, Kern-Tulare and the Fresno-Tulare Group and the United States for providing for deliveries from the California Delta or Rag Gulch or Kern-Tulare supplies delivered pursuant to federal approval.”

(Draft EIR, page 3-9.) Water delivered under the proposed Project would be the same water delivered under existing contracts and renewals subject to federal approval, for which “no such consideration shall be due” to AEWS. As noted in the Draft EIR,

“[t]he practice of occasionally introducing CVP water allocated under the CV contract and delivered through the Delta into the FKC is a long-standing practice that has historically occurred and is a baseline project condition.” (Draft EIR, page 4.4-21.) Such practice constitutes an existing baseline condition that would not change under the proposed Project, thus the Draft EIR determined no significant impact to water quality in its analysis of Impact 4.4-1. (Draft EIR, page 4.4-20 through 4.4-23.)

I. Response to Comment 4-I

The Commenter mentions the “friant proposal.”

Thank you for your comment. Please see Response 4-B, above.

J. Response to Comment 4-J

The Commenter mentions the “friant proposal.”

Thank you for your comment. Section 3.5.1 (Project Components) discusses existing adopted regulatory constraints. Please see Response 4-B.

K. Response to Comment 4-K

The Commenter notes antidegradation policy.

Thank you for your comment. Global Response #4 addresses concerns regarding the federal and State antidegradation policies.

L. Response to Comment 4-L

The Commenter mentions the “friant proposal.”

Thank you for your comment. Section 4.1-4 (Impact and Mitigation Measures) discusses potential impacts to biological resources. As noted above, the Friant Water Authority’s water policy document is related to water quality. Please see Response 4-B, above.

M. Response to Comment 4-M

The Commenter mentions the Friant proposal.

Thank you for your comment. Section 4.4-2 (Environmental Setting) discusses the overall physical setting of the proposed project, as it related to Hydrology and Water Quality. As noted above, the Friant Water Authority’s water policy document is related to water quality. Please see Response 4-B, above.

N. Response to Comment 4-N

The Commenter mentions the Friant proposal.

Thank you for your comment. Please see Response 4-B, above.

O. Response to Comment 4-0

The Commenter mentions “what about delivery to others”.

Thank you for your comment.

The proposed Project includes two components for each CV Contractor:

- The approval and execution of a contract with Reclamation that converts, pursuant to the WIIN Act, the CV Contractor's existing water supply contract for CVP water to a repayment contract authorizing prepayment of outstanding CVP construction costs;

and

- The approval and execution of a contract with Reclamation and DWR that renews and updates the terms of an existing contract for the conveyance of the CV Contractor's CVP water until 2035.

The proposed conversion of the existing CVP contracts under the WIIN Act, and renewal and updating the conveyance provisions of the existing contracts into separate conveyance contracts, will allow the CV Contractors to continue receiving CVP water in the manner consistent with baseline current and historical practices.

As a result, no changes over current conditions would occur as a result of the Project and implementation of the proposed Project would not result in any direct or indirect change in the quality of water delivered to the CV Contractors. The water supply source(s) would remain the same, as would the means and methods of conveyance.

P. Response to Comment 4-P

The Commenter mentions the “then current policy” and the “friant proposal.”

Thank you for your comment. Please see Response 4-B, above.

Q. Response to Comment 4-Q

The Commenter asks if this section relates to Kern Tulare Water District and Pixley Irrigation District “at most”.

Thank you for your comment. As stated on page 4.4-21 of the Draft EIR:

“The FKC is part of the Friant Division of the CVP and conveys water from Millerton Lake on the San Joaquin River south to Kern River near Bakersfield. The FKC is owned by Reclamation but, since October of 1986, is operated and maintained by the FW A, which is termed the “non-federal operating entity” in applicable Reclamation contracts. Water deliveries via the FKC are made pursuant to water service and

repayment contracts and based on hydrologic supply and district demands. Water is typically delivered south by gravity flow from Millerton Lake. Alternatively, water may be delivered to contractors from other sources such as from the Delta and pumped into the FKC. Such deliveries frequently introduce water into the FKC near its southern end at its intertie with the CVC and may then be pumped from lower reaches of the FKC to its upper reaches. This upstream flow ("reverse flow") is accomplished by operating pumps at selected checks to lift the water from the downstream side of the check, over the check, to the upstream side of the check. One such reach is created by the Shafter Check Structure at FKC Milepost 137.2, where a permanent 30 cubic feet per second ("cfs") pump is located and where FWA installs and operates it and other temporary pumps as needed. Other similar reaches further north are created by the Paso Check and the Lake Woollomes Check, where FWA installs temporary pumps as conditions warrant to facilitate delivery of water further north in the FKC. If all three checks are operated in reverse, water can be conveyed north from the CVC to KTWD, the southernmost CV Contractor."

R. Response to Comment 4-R

The Commenter states that certain provisions of Reclamation's 2008 Water Quality Policy should be changed with regard to "physically the same".

Thank you for your comment.

The Lead Agency understands the Commenter has been engaged with Friant Water Authority regarding the development of a *Draft* Friant Water Quality Policy (Draft Policy), and that the Draft Policy has been The Draft Policy is not final, nor is it presently in force. Reclamation's Policy for Accepting Non-Project Water into the Friant-Kern and Madera Canals, dated March 7, 2008 ("Water Quality Policy") presently governs water quality related to the introduction of all water into the FKC. The policy's purpose is "to ensure that water quality is protected" in the FKC. Pursuant to the policy there are various, different water quality requirements depending on the source and quality of water. Pursuant to the terms of the Water Quality Policy, the delivery of CVP water into the FKC is not subject to the Water Quality Policy, as the policy only applies to non-project water. Project Water-from whatever part of the CVP including from the Delta-requires no additional evaluation beyond that already performed under the policy. Under the Water Quality Policy, "water pumped from the California Aqueduct and Cross Valley Canal into the lower Friant-Kern Canal" is an example of water that does not require additional water quality analysis. Under the Water Quality Policy, the reason that no additional water quality analysis over that which is already conducted for Project water is required in order to convey such water through the Friant-Kern Canal is "because it is physically the same as Project water."

As noted throughout the DEIR, actions taken pursuant to the proposed Project are and will be subject to all applicable laws and regulations. (Draft EIR, page 4.4-23 ["The

Project is and will remain subject to all applicable water quality standards and conditions.”].)

S. Response to Comment 4-S

The Commenter mentions the Friant proposal.

Thank you for your comment. Please see Response 4-B, above. The DEIR concludes that the impacts related to hydrology and water quality are less than significant; therefore, no mitigation is required.

T. Response to Comment 4-T

The Commenter mentions the Friant proposal.

Thank you for your comment. Please see Response 4-B, above. The DEIR concludes that cumulative impacts related to hydrology and water quality are less than significant; therefore, no mitigation is required.

U. Response to Comment 4-U

The Commenter states Section 5.1.1 (Potential for Less than Significant Impacts to Occur) should be corrected to be consistent with the comment above.

Thank you for your comment. Please see Response 4-S and 4-T, above.

V. Response to Comment 4-V

The Commenter states Table 6-1 should be modified as follows:

“If a Friant policy/guidelines mitigation measure is added, I think the technical status of the relevant impact areas would be ‘less than significant with mitigation.’ On the other hand, if compliance with then-applicable policy/guidelines is somehow added as part of the project, I think the impacts designations could remain as is.”

Thank you for your comment. Please see Response 4-B, 4-S and 4-T, above.

The Lead Agency understands the Commenter has been engaged with Friant Water Authority regarding the development of a *Draft* Friant Water Quality Policy (Draft Policy), and that the Draft Policy has been The Draft Policy is not final, nor is it presently in force.

Reclamation's Policy for Accepting Non-Project Water into the Friant-Kern and Madera Canals, dated March 7, 2008 (“Water Quality Policy”) presently governs water quality related to the introduction of all water into the FKC. The policy's purpose is “to ensure that water quality is protected” in the FKC. Pursuant to the policy there are various, different water quality requirements depending on the

source and quality of water. Pursuant to the terms of the Water Quality Policy, the delivery of CVP water into the FKC is not subject to the Water Quality Policy, as the policy only applies to non-project water. Project Water-from whatever part of the CVP including from the Delta-requires no additional evaluation beyond that already performed under the policy. Under the Water Quality Policy, "water pumped from the California Aqueduct and Cross Valley Canal into the lower Friant-Kern Canal" is an example of water that does not require additional water quality analysis. Under the Water Quality Policy, the reason that no additional water quality analysis over that which is already conducted for Project water is required in order to convey such water through the Friant-Kern Canal is "because it is physically the same as Project water."

As noted throughout the DEIR, actions taken pursuant to the proposed Project are and will be subject to all applicable laws and regulations. (Draft EIR, page 4.4-23 ["The Project is and will remain subject to all applicable water quality standards and conditions."].) The Project is and will remain subject to all applicable water quality standards and conditions, including any future potential policy—such as the *Draft* Friant-Kern Canal Water Quality—if adopted by Reclamation and to the extent it is applicable to the Project.

Comment Letter 5

From: [Eric Limas](#)
To: [Chris Mynk](#)
Subject: [EXTERNAL]:Fwd: Dropbox link
Date: Friday, September 3, 2021 12:53:43 PM
Attachments: [CVC environmental statement on CVC enlargement.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank You,

Eric Limas
General Manager
Lower Tule River and Pixley Irrigation Districts
Tea Pot Dome Water District
Tel: 559-686-4716

----- Forwarded message -----

From: **Jeevan Muhar** <jmuhar@aewsd.org>
Date: Sat, Aug 14, 2021 at 7:54 AM
Subject: RE: Dropbox link
To: Eric Limas <elimas@ltrid.org>

Got it.

You should have it now.

While the Friant proposal isn't "final", to completely ignore it and not mention it doesn't sit well.

I would think you can come up with language that references the proposed program and its potential to be adopted but the default is "then-current".

The original CVC EIR (attached) mentioned a leaching need – and there is nothing in that regard for the current Draft EIR.

5-A

Let me know.

Jeevan Muhar, P.E.
Engineer-Manager
Arvin-Edison Water Storage District
PO Box 175
Arvin, CA 93203

661-854-5573 office phone
661-854-5213 office fax
661-747-0062 mobile phone

email: jmuhar@aebsd.org



From: Eric Limas <elimas@ltrid.org>
Sent: Friday, August 13, 2021 3:01 PM
To: Jeevan Muhar <jmuhar@aebsd.org>
Subject: Dropbox link

You should be getting an email with a Dropbox link to upload the document. Let me know once you upload it. Thanks.

Thank You,

Eric Limas

General Manager

Lower Tule River and Pixley Irrigation Districts

Tea Pot Dome Water District

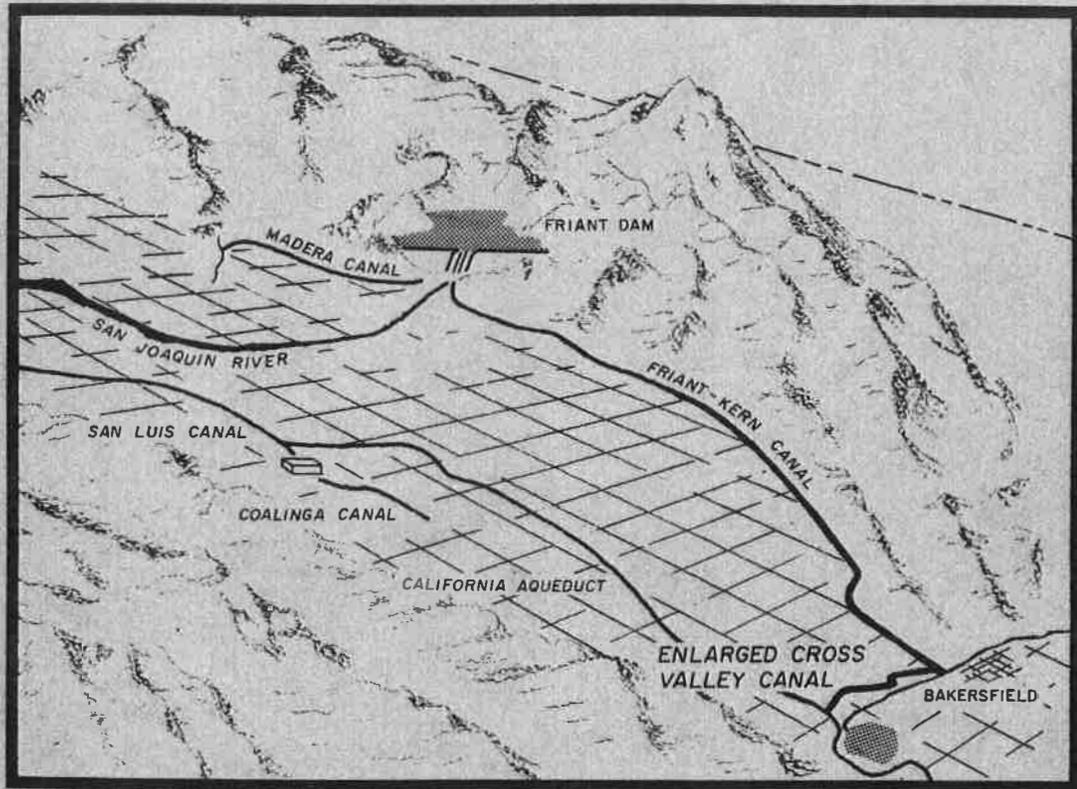
Tel: 559-686-4716

Environmental Statement

FINAL

EES 75-46

USE OF CENTRAL VALLEY PROJECT WATER
THROUGH ENLARGED CROSS VALLEY CANAL



5-A

prepared by

Department of the Interior · Bureau of Reclamation
Mid-Pacific Regional Office · Sacramento, California

portions of the service area are considered low rolling foot-hills of the Sierra Nevada Mountain Range and out of necessity will be irrigated with very low application rates utilizing either low application sprinklers or drip irrigation systems. Therefore, it is not expected that internal drainage problems (high water tables) will develop and become a problem. However, upon irrigation, moisture levels in the soil profile will be higher, especially in the fall of the year. This condition may then pose a problem in that winter rainfall, which presently in large part replaces a depleted soil moisture column, will under future condition of irrigation be rejected. Winter runoff as a result may increase and in turn create additional runoff problems to the lower-lying lands and the maintenance of the Friant-Kern Canal.

Water quality of Enlarged Cross Valley water is not expected to pose a problem to the users of such water. Although technically it can be shown that the import waters contain higher salt levels than waters that originate from sources within the project area, the difference is not large. Both waters, those that originate in the project area and those expected to be imported, are of excellent quality for irrigation. From a technical standpoint the additional small salt load in the Enlarged Cross Valley import supplies would require a small additional leaching increment to maintain proper soil salt levels. However, from a practical standpoint, it is doubtful such differences in water quality and their effect upon soils can be measured or will have any detrimental effect.

5-A

An estimate of effect of return flows upon the ground-water basin was made assuming 130,000 acre-feet per year of Enlarged Cross Valley water is replaced for 130,000 acre-feet of Friant-Kern Canal water within the Kern River Basin. Such total effect or deterioration of the ground-water basin was estimated at 0.6 mg/l per year, or about 60 mg/l in 100 years. It should be pointed out, however, without either supply available to the area and assuming the local residents continue to overdraft the ground-water basin, the deterioration of ground water will approximate 3 mg/l/year or about five times the rate of deterioration when compared to Enlarged Cross Valley water. Additionally, present water quality of the ground-water basin (800 mg/l) has exceeded the salt tolerance levels of sensitive crops under normal irrigation efficiency levels.

Present ground-water overdraft (1,000,000 AF/year) conditions within the east side of the San Joaquin Valley is the prime cause of the existing adverse salt balance condition. Under falling ground-water levels, proper salt balance conditions cannot be met. Water tables within the area will need to be restored to a point where ground-water gradients are normal

to the general topographic conditions of the valley. Under such conditions ground-water tables with gradients that slope toward the valley trough can be intercepted by drainage wells that pump the saline water for final disposal into a drainage outlet channel. Even under Enlarged Cross Valley import conditions the ground-water system will continue to be overdrafted although at a somewhat lower rate and water tables will continue to decline. Therefore, no drainage outlet system under project conditions will be needed nor can the adverse salt balance condition be corrected until such time that ground-water levels are restored to a point whereby drainage wells located on lower fans and interfan areas can intercept the saline ground water. Unless the east side of the San Joaquin Valley is successful in restoring the ground-water body and/or limiting withdrawals from the system to safe yield conditions, proper salt balance conditions are impossible to meet.

d. Land Use

Since the supplemental water supply, except for the 4,000 acre-feet for municipal use, is to be used either to alleviate overdrafting ground-water pumpage or to provide a more nearly full supply to the present agricultural development, there is no anticipated change projected in the present land use patterns occasioned by use of this water supply.

The several areas to be served all have well-established irrigated agriculture and little if any change is anticipated in type and size of cropping patterns.

e. Land Subsidence

The availability of additional water to the areas within the Tulare-Wasco subsidence area will have a beneficial effect in that further subsidence will be reduced. Although the total quantity to be provided is relatively small, it will provide some assistance just as Friant-Kern water has improved the subsidence problem in certain areas.

f. Vegetation

Water in the California Aqueduct originates in the Sacramento-San Joaquin Delta, which is the common drainage point for all streams and rivers draining the Sacramento and San Joaquin Valleys. It is expected that seeds of weeds and other plants not now found in Kern County will be carried by these rivers into the Delta, will be pumped into the California Aqueduct, and will eventually find their way to the service area. The extent and nature of such introduced species cannot be forecast with any degree of accuracy.

g. Hydrology

(1) Surface hydrology. Under project operation the supplemental Enlarged Cross Valley Canal water supply will have little impact on the major streams which traverse the area. The most significant impact will be the slight increase in return flows to the small local drainages in those areas where districts with less than full supply will have an increased water supply.

(2) Subsurface hydrology. The impact on subsurface hydrology will be the beneficial effect on the present depletion of ground water in the area. This impact will result from the combination of less ground-water pumping and additional recharge by percolation of water from surface applied project water.

h. Water Quality

5-A Providing supplemental water to irrigated lands may result in a relatively small increase in the total dissolved solids deposited in the soils or ground water within the Tulare Lake Basin. Providing a replacement water supply to those areas which are presently served from ground water would be expected to improve the overall quality of the ground- and surface-water supplies of the area. This would result from the replacement of relatively high saline ground water (800 mg/l medial value) with the 200-300 mg/l from the Sacramento Delta. Water conveyed through the Cross Valley Canal for the east-side districts will contribute very little to the overall degradation of the ground-water supplies from the long-term deposition of salts from the irrigated agricultural lands throughout the basin. This imported Cross Valley supply will be in the relative magnitude of 100,000 acre-feet (import) to over 5 million acre-feet (water use in the east-side San Joaquin Valley) or possibly about 1 to 2 percent. Eventually provision will have to be made to remove the poor quality return flows in the San Joaquin Valley which will result primarily from use of presently existing water supplies. To accomplish this, the San Joaquin Master Drain has been authorized as a feature of the State's California Water Plan. The State intends to construct this facility when adequate repayment arrangements can be entered into with potential users of the drain. However, it now appears that it will be several years before drainage problems become extensive enough to complete such arrangements.

i. Air Quality

It is unlikely that the area will be utilized for other than agricultural purposes in the foreseeable future; therefore, no significant changes in air quality are expected.

A. Response to Comment 5-A

The commenter states the DEIR needs to reference the “original EIR” with regard to the need to leach. The Commenter mentions the Friant Proposal.

Thank you for your comment. For responses relating to the Friant proposal, please see Response 4-B, above. An excerpt from a Final Environmental Statement, titled: *Use of Central Valley Project Water Through Enlarged Cross Valley Canal*, dated 1975, was provided by AEWS. The excerpted pages state water quality from enlarged Cross Valley water is “not expected to pose a problem to the users of such water”. Additionally, the Final Environmental Statement states that salts may be higher from imported water; however, the water is “excellent quality for irrigation” and may require a “small additional leaching increment to maintain proper soil salt levels.

Appendix A-1

(AEWSD NOP Comments)

November 4, 2020

VIA E-MAIL

Mr. Eric Limas, General Manager
Lower-Tule Irrigation District
357 E. Olive Ave.
Tipton, CA 93272

Notice of Preparation of a Draft Environmental Impact Report for the CVC Contractors
Re: Conversion of Water Supply Contracts and Renewal Conveyance Contracts

Dear Mr. Limas:

On behalf of Arvin-Edison Water Storage District (“AEWSD”), thank you for the opportunity to provide initial comments on the scope and contents of the environmental information to be included in your Draft Environmental Impact Report (“Draft EIR”) for the proposed CVC Contractors Conversion of Water Supply Contracts and Renewal Conveyance Contracts project (the “Project”).

AEWSD is generally supportive of the contract conversions and renewals. However, we are also concerned about the potential for discharge of Cross Valley Canal (“CVC”) water into the Friant-Kern Canal (“FKC”). By introducing Delta water (which generally has higher concentrations of Total Dissolved Solids, among other constituents, than supplies drawn from Millerton Lake) into the FKC, such discharges may significantly impact the quality of both surface water and groundwater, as well as agricultural land uses and water banking programs within and involving AEWSD. The Draft EIR should address these and other direct, indirect, and cumulative water quality impacts; otherwise, it may not provide a legally defensible basis to approve the Project.

With that in mind, we note that AEWSD has collected a substantial amount of current and historic information regarding the quality of relevant water supplies, including the FKC, CVC, and groundwater. AEWSD would be pleased to make that information available to the Draft EIR’s preparers.

Mr. Eric Limas, General Manager
November 4, 2020
Page 2

Thank you in advance for considering AEWSD's concerns on this important matter. We look forward to reviewing the Draft EIR.

Sincerely,



Matthew Adams

cc: Jeevan Muhar, AEWSD

Appendix B-1

(Updated Draft Proposed Long-Term Conveyance Contract replacement)

1 Parties.

2 EXPLANATORY RECITALS

3 A. WHEREAS, the United States has constructed and is operating the
4 Central Valley Project, California, (CVP) for diversion, storage, carriage, distribution and
5 beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and
6 wildlife mitigation, protection and restoration, generation and distribution of electric
7 energy, salinity control, navigation and other beneficial uses, of waters of the
8 Sacramento River, the American River, the Trinity River, and the San Joaquin River and
9 their tributaries; and

10 B. WHEREAS, DWR has constructed and is operating the State Water
11 Resources Development System, a portion of which is commonly referred to as the
12 State Water Project (SWP), pursuant to the laws of the State of California involving the
13 development, transportation, and delivery of water supplies to public agencies
14 throughout the State of California; and

15 C. WHEREAS, the San Luis joint-use facilities are part of both the federal
16 CVP and the California SWP and are operated pursuant to the Agreement between the
17 United States and DWR for the Construction and Operation of the Joint-Use Facilities of
18 the San Luis Unit, dated December 30, 1961, as supplemented by the Supplemental
19 Agreement for the Operation of the San Luis Unit, dated January 12, 1972; and

20 D. WHEREAS, the United States constructed the CVP facilities, which will be
21 used in part for furnishing the water which DWR will convey to the Contractor pursuant
22 to the terms of this Contract; and

23 E. WHEREAS, CVP Water may be made available to the Contractor in the

1 Sacramento-San Joaquin River Delta (Delta) and/or from the Friant Division of the CVP
2 and delivered to the Contractor through appropriate federal, state, joint-use and/or local
3 facilities; and

4 F. WHEREAS, the Cross Valley Canal, connecting the California Aqueduct
5 and the Friant-Kern Canal in Kern County, has been constructed by the Contractor and
6 others at no cost to either the United States or DWR and is currently operated by Kern
7 County Water Agency; and

8 G. WHEREAS, the Contractor has the right to use the Cross Valley Canal for
9 conveyance of the CVP Water furnished hereunder; and

10 H. WHEREAS, the rights to CVP Water were acquired by the United States
11 pursuant to California law for operation of the CVP; and

12 I. WHEREAS, the Contractor, DWR and the United States entered into
13 Contract No. 14-06-200-LTR, as amended, which established terms for the water
14 service from the CVP and conveyance to the Contractor of CVP Water from November
15 12, 1975, through February 29, 1996; and

16 J. WHEREAS, the Contractor, DWR and the United States have pursuant to
17 subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA),
18 subsequently entered into interim renewal contract(s) identified as Contract No(s). 14-
19 06-200-LTR-IR1, IR2, IR3, IR4, IR5, IR6, IR7, IR8, IR9, IR10, IR11, IR12, IR13, IR14,
20 IR15, IR16, IR17 and IR18 the current of which is hereinafter referred to as the Existing
21 Contract, which provides for the continued water service from the CVP and conveyance
22 of such CVP Water to the Contractor from March 1, 2020, through February 28, 2022;
23 and

1 K. WHEREAS, the Contractor has requested the conversion of the Existing
2 Contract, as it relates to water service from the CVP, to a Contract Between The United
3 States And the Contractor, Providing For Project Water Service And Facilities
4 Repayment, from the CVP, which is hereinafter referred to as Repayment Contract,
5 pursuant to the WIIN Act, Federal Reclamation law, the terms of the Existing Contract,
6 and the applicable laws of the State of California; and

7 L. WHEREAS, DWR desires to place its services for conveyance of CVP
8 Water through SWP Facilities into a contract separate from the Repayment Contract
9 between the United States and the Contractor; and

10 M. WHEREAS, the United States and the Contractor shall, prior to or
11 concurrent with the execution of this Contract, enter into a separate Repayment
12 Contract upon completion of necessary requirements of law for execution of the
13 Repayment Contract; and

14 N. WHEREAS, the United States and DWR have determined that the
15 Contractor has fulfilled all of its obligations under the Existing Contract, except for any
16 charges yet to be invoiced by DWR or charges pending payment to DWR; and

17 O. WHEREAS, the Contractor has entered into an agreement entitled
18 "Agreement Regarding California Environmental Quality Review for Cross Valley Canal
19 Contractors' Contracts for Renewal of Central Valley Project Water Supply and
20 Conveyance Through State Facilities" by and among the Contractor, other Cross Valley
21 Canal contractors similarly situated to the Contractor, and DWR. Pursuant to that
22 agreement, Lower Tule River Irrigation District, as Lead Agency, prepared and certified
23 an Environmental Impact Report (EIR) pursuant to the California Environmental Quality

1 Act (CEQA) on behalf of all CVC contractors to provide CEQA compliance for the
2 execution of this Contract; and

3 P. WHEREAS, DWR as a responsible agency under CEQA has reviewed
4 and considered the information in the EIR prepared by the Lead Agency and all other
5 appropriate environmental documentation prior to entering into this Contract; and

6 Q. WHEREAS, in conformance with the National Environmental Policy Act
7 (NEPA), Council on Environmental Quality regulations (40 CFR 1500-1508), and
8 Department of Interior Regulations (42 CFR Part 46), the Bureau of Reclamation
9 prepared ().

10 R. WHEREAS, the Parties intend by this Contract to continue a cooperative
11 relationship in order to achieve their mutual goals; and

12 S. WHEREAS, the United States and the Contractor desire to contract with
13 DWR for conveyance of CVP Water through SWP Facilities under an arrangement
14 wherein the United States will furnish the necessary power for pumping such water
15 through DWR's Harvey O. Banks Pumping Plant (Banks) and Dos Amigos Pumping
16 Plant (Dos Amigos) so that DWR can provide the Contractor with the conveyance of
17 CVP Water under the terms of this Contract; and

18 T. WHEREAS, DWR is willing to convey CVP Water through SWP Facilities
19 subject to the needs for SWP project operations, services to SWP Contractors, the
20 availability of transportation capacity, regulatory compliance and payment of costs as
21 herein provided; and

22 U. WHEREAS, the Existing Contract states that DWR shall negotiate in good
23 faith with the Contractor and the United States in a process providing for the execution

1 of a long-term renewal contract provided that no such contract shall obligate DWR
2 beyond February 28, 2035, without further negotiations; and

3 V. WHEREAS, the United States, DWR, and the Contractor are willing to
4 enter into this long-term conveyance contract on the terms and conditions set forth
5 below.

6 AGREEMENT

7 NOW, THEREFORE, in consideration of the mutual and dependent covenants
8 herein contained, it is hereby mutually agreed by the Parties hereto as follows:

9 1. DEFINITIONS

10 When used herein unless otherwise distinctly expressed, or manifestly
11 incompatible with the intent of the Parties as expressed in this Contract, the term:

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

14 (b) "Cross Valley Canal" shall mean the water conveyance and related
15 works in Kern County constructed by the Contractor and others, which canal is currently
16 operated by Kern County Water Agency, to deliver water from the California Aqueduct;

17 (c) "Cross Valley Canal Operator" shall mean the entity which operates
18 the Cross Valley Canal;

19 (d) "CVP" shall mean the Central Valley Project owned by the United
20 States and managed by the Department of the Interior, Bureau of Reclamation;

21 (e) "CVP Water" shall mean all water that is developed, diverted,
22 stored, or delivered by Reclamation in accordance with the statutes authorizing the CVP
23 and in accordance with the terms and conditions of water rights acquired pursuant to

1 California law made available to the Contractor;

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

4 (g) "Minimum Operation, Maintenance, Power, & Replacement
5 (OMP&R) Costs" shall mean those OMP&R costs incurred by DWR irrespective of the
6 amount of water delivered for the Contractor;

7 (h) "Operation and Maintenance" or "O&M" shall mean normal and
8 reasonable care, control, operation, repair, replacement (other than capital
9 replacement), and maintenance of SWP facilities;

10 (i) "Operations Manual" shall mean the manual developed by DWR
11 and Reclamation setting forth procedures, which shall be consistent with this Contract,
12 for working level communications including scheduling and accounting for power and
13 water deliveries;

14 (j) "Reclamation" shall mean the United States Department of the
15 Interior, Bureau of Reclamation;

16 (k) "Secretary" shall mean the Secretary of the Interior, a duly
17 appointed successor, or an authorized representative acting pursuant to any authority of
18 the Secretary and through any agency of the United States Department of the Interior;

19 (l) "SWP" shall mean the State Water Project as authorized by
20 California Water Code sections 11100 et seq. and California Water Code sections
21 12930 et seq.;

22 (m) "SWP Contractor(s)" shall mean those entities with a long-term
23 water supply contract of the type included in DWR Bulletin 141;

1 (n) "SWP Facilities" shall mean that portion of the SWP (including
2 DWR's portion of San Luis Unit joint-use facilities), necessary to convey CVP Water
3 from the Delta to points of delivery along the California Aqueduct;

4 (o) "Transportation Minimum OMP&R Cost" and "Transportation
5 Variable OMP&R Costs" shall mean those costs incurred by DWR for OMP&R of SWP
6 Facilities for delivery of water for the Contractor;

7 (p) "Variable Operation, Maintenance, & Replacement (OM&R) Costs"
8 shall mean the costs incurred by DWR for OM&R of all SWP Facilities used in
9 conveying CVP Water for the Contractor which costs are dependent upon and vary with
10 the amount of water delivered for the Contractor;

11 (q) "Year" shall mean the period from and including March 1 of each
12 Calendar Year through the last day of February of the following Calendar Year.

13 2. TERM OF CONTRACT

14 (a) This Contract shall be effective _____, 20__ through February
15 28, 2035. However, Article 9 shall remain in effect until the expiration of the applicable
16 statute of limitations or until any claim or litigation arising from or concerning this
17 Contract is finally resolved, whichever occurs later. In the event the Contractor wishes
18 to renew this Contract beyond February 28, 2035, DWR, Reclamation and the
19 Contractor may renew this Contract to convey water for additional periods on terms
20 mutually agreeable to the Parties.

21 (b) This Contract shall terminate early if all Parties agree in writing to
22 terminate this Contract. Additionally, DWR may terminate this Contract upon providing
23 the Contractor and Reclamation with sixty (60) days' written notice if the Contractor fails

1 to fully or timely pay DWR charges for providing services to the Contractor pursuant to
2 this Contract and fails to cure such failure to pay within sixty (60) days of receiving
3 DWR's written notice. If during the term of this Contract the Repayment Contract is
4 modified or terminated so as to materially alter a Party's performance or frustrate the
5 Parties purposes of entering into this Contract, any Party may request the terms of this
6 Contract to be renegotiated, in which case the Parties shall meet and seek to agree to
7 amended terms reflecting such change in circumstances. If the Parties cannot reach an
8 agreement, DWR shall have the right to terminate this Contract, provided that: (1) DWR
9 shall make all reasonable efforts in good faith to reach agreement and continue
10 performance under the Contract; and (2) DWR shall provide not less than one hundred
11 and twenty (120) days written notice of termination to the Contractor.

12 3. NO IMPACT

13 (a) This Contract shall not be administered or interpreted in any way
14 that would create or modify any priorities for use of SWP Facilities, or cause adverse
15 impacts to the SWP, including but not limited to any SWP Facilities, or to any SWP
16 water allocations, SWP water deliveries or other SWP operations and services to SWP
17 Contractors.

18 (b) The Parties acknowledge that operation of SWP Facilities is not,
19 and shall not be, subject to federal Reclamation Law.

20 4. WATER TO BE CONVEYED FOR THE CONTRACTOR

21 (a) DWR shall provide water conveyance service through SWP
22 Facilities for the Contractor pursuant to this Contract and assumes no responsibility for
23 providing a water supply which is to be made available for the Contractor by

1 Reclamation under its Repayment Contract.

2 (b) Reclamation may make CVP Water available in the Delta, through
3 Federal Delta diversion and conveyance facilities, and/or from the Federal share of
4 storage at San Luis Reservoir for the Contractor for conveyance by DWR. For CVP
5 Water made available by Reclamation from Federal diversion and conveyance facilities
6 and/or from the Federal share of storage at San Luis Reservoir for such conveyance,
7 the point at which such water shall be made available for conveyance by DWR is O'Neill
8 Forebay.

9 (c) Reclamation shall notify DWR of the proposed quantity, location
10 and timing of CVP Water made available for the Contractor for conveyance by DWR
11 pursuant to this Contract. Reclamation assumes no responsibility for such conveyance.

12 (d) When CVP Water is made available by Reclamation for the
13 Contractor, DWR shall provide for the Contractor, subject to the availability of capacity
14 as determined by DWR, conveyance of such CVP Water consistent with the following:

15 (1) Reclamation shall make water available for the Contractor as
16 set forth in the Repayment Contract. Such deliveries for the Contractor shall be made
17 at such times and rates of flow as Reclamation and DWR shall agree.

18 (2) DWR, in accordance with an approved delivery schedule,
19 shall convey the amount of CVP Water for the Contractor; provided that such deliveries
20 of CVP Water shall be made only in a manner which will not increase the cost of, or
21 adversely affect, SWP operations and services to SWP Contractors. Such deliveries
22 shall be made as follows:

23 (i) To Cross Valley Canal turnouts in Reach 12E or other

1 turnouts from the California Aqueduct in Reaches 2A through 13B;

2 (ii) To O'Neill Forebay to be stored by Reclamation in the
3 Federal share of storage in San Luis Reservoir for later release and conveyance by
4 DWR for the Contractor; or

5 (iii) To other points of delivery mutually agreed to in
6 writing by DWR, Reclamation and the Contractor;

7 (3) The total amount of CVP Water made available to DWR for
8 the Contractor by Reclamation shall include water to compensate DWR for water
9 conveyance losses incurred in the conveyance of CVP Water for the Contractor. The
10 amount of such losses is 2% from the Delta through Reach 3 or 3% from the Delta
11 through Reach 13B of the CVP Water made available unless otherwise determined by
12 DWR. After coordination with the Parties, DWR may adjust the percentage of losses if
13 supported by DWR's technical analysis provided to the Parties. DWR's determination
14 will remain consistent with the then current losses policy applied to other DWR
15 conveyance agreements. Adjustments regarding the percentage of losses will be
16 documented in Exhibit "A".

17 (4) CVP Water received by DWR for conveyance and possible
18 storage in the Federal share of San Luis Reservoir for delivery to the Contractor will be
19 commingled with waters of DWR which are pumped through facilities of the California
20 Aqueduct and with other waters of both the United States and DWR in the joint-use
21 facilities of the San Luis Unit.

22 (5)  Upon request of Reclamation, DWR will allow the
23 encroachment of CVP water stored by Reclamation for the Contractor in the State share

1 of San Luis Reservoir provided that such encroachment shall be only in a manner which
2 will not increase the cost of, or adversely affect, SWP operations and services to SWP
3 Contractors.

4 (6) Subject to the necessary arrangements, Reclamation shall
5 transmit or cause to be transmitted, by exchange or otherwise, such quantities of power
6 as shall be required by DWR to pump through Banks and DWR's share of Dos Amigos,
7 the quantities of CVP Water pursuant to subdivision (b) of this Article.

8 (7) DWR shall furnish Reclamation with such information as
9 Reclamation and DWR agree is needed regarding the timing and quantities of power
10 required by DWR to pump CVP Water. Such information shall be exchanged between
11 Reclamation and DWR in accordance with provisions that may be set forth in an
12 Operations Manual.

13 (8) Reclamation and DWR may, under terms and conditions
14 satisfactory to both, and in accordance with applicable law, exchange water and/or
15 power necessary for delivery of CVP Water for the Contractor under terms of this
16 Contract.

17 (e) Conveyance of CVP Water by DWR shall be subject to capacity
18 available in SWP Facilities in excess of capacity determined by DWR to be needed for
19 SWP operations or services to any SWP Contractor. DWR is solely responsible for
20 determining whether conveyance capacity exists for the CVP Water. Conveyance for
21 the Contractor may be curtailed prior to or subsequent to approval of the Contractor's
22 schedule under Article 6 of this Contract, in the event DWR determines the delivery
23 would interfere with the delivery of water to SWP Contractors or other SWP operations

1 such as a State Drought Water Bank necessary to meet obligations of the SWP,
2 including delivery of water to SWP storage or reregulation of stored water for delivery to
3 SWP Contractors, or regulatory compliance.

4 (f) For purposes of determining the available capacity under this
5 Contract, the deliveries of CVP Water for the Contractor shall not be considered a
6 “service to SWP Contractors,” notwithstanding any arrangement the Contractor may
7 have with a SWP Contractor.

8 (g) If DWR is precluded in whole or in part from conveying water under
9 this Contract as a result of uncontrollable forces, DWR is relieved from the obligation to
10 deliver the water to the extent it is reasonably unable to complete the obligation due to
11 the uncontrollable force. Uncontrollable forces shall include, but are not limited to
12 earthquakes, fires, tornadoes, floods and other natural or human caused disasters.

13 (h) DWR may temporarily discontinue or reduce the quantity of CVP
14 Water to be delivered to the Contractor for the purpose of investigation, inspection,
15 maintenance, repair or replacement of any SWP Facilities or any part thereof necessary
16 for the delivery of CVP Water to the Contractor. To the extent reasonably practicable,
17 DWR shall give the Contractor notice in advance of such temporary discontinuance or
18 reduction, except in the case of emergency, in which case no notice need be given.
19 DWR shall use its best efforts to avoid such discontinuances or reductions in such
20 service, and upon resumption of service after such reduction or discontinuance, and if
21 requested by the Contractor, DWR will, if capacity is available, deliver the quantity of
22 CVP Water which otherwise would have been delivered in the absence of such
23 discontinuance or reduction, but only to the extent such delivery can be made without

1 adversely impacting SWP operations and deliveries to SWP Contractors. For CVP
2 Water not delivered after a discontinuance or reduction, the Contractor shall be
3 responsible for all costs as set forth in Article 10 of this Contract.

4 (i) Subject to the limitations provided herein, DWR shall make all
5 reasonable efforts consistent with sound fiscal policies and proper operating procedures
6 to maintain necessary facilities and to deliver CVP Water to the Contractor in
7 accordance with the provisions of this Contract in such a manner and at such times as
8 such CVP Water is scheduled by the Contractor.

9 5. OPERATIONS MANUAL

10 DWR and Reclamation may develop an Operations Manual for use by DWR and
11 Reclamation. DWR and Reclamation may update the Operations Manual from time to
12 time without amendment of this Contract.

13 6. SCHEDULING CONVEYANCE OF WATER

14 (a) On or before each March 1, and at such other times as necessary,
15 the Contractor shall submit to DWR and Reclamation a written schedule in a form
16 satisfactory to DWR and Reclamation. The written schedule, at a minimum, shall show
17 by month the quantities and expected point(s) of delivery of CVP Water to be conveyed
18 by DWR for the Contractor pursuant to this Contract for the Year.

19 (b) If the delivery of the water would involve use of the Cross Valley
20 Canal, the Contractor's requested schedule and any modifications thereto shall indicate
21 concurrence from the Cross Valley Canal Operator.

22 (c) If DWR is unable to convey CVP Water in the quantities and times
23 requested in the schedule, the Contractor may elect to receive such CVP Water at other

1 times during such Year as DWR determines, in consultation with the Contractor, that the
2 water can be delivered without interference with SWP operations or services to SWP
3 Contractors.

4 (d) Pumping of CVP Water for the Contractor at Banks and Dos
5 Amigos shall be identified separately from other federal pumping at these plants.

6 (e) Pumping of CVP Water for the Contractor at Banks and Dos
7 Amigos will normally be done during on-peak hours unless DWR determines that off-
8 peak capacity is available that is not needed for SWP operations or services to SWP
9 Contractors.

10 7. POINT OF DELIVERY AND EXCHANGES

11 (a) CVP Water scheduled and conveyed pursuant to this Contract shall
12 be delivered for the Contractor at a point or points of delivery in Reaches 2A through
13 13B or other points of delivery mutually agreed to in writing by Reclamation, DWR, and
14 the Contractor.

15 (b) The Parties acknowledge that CVP Water shall be conveyed by
16 DWR and delivered for the Contractor by direct delivery via the Cross Valley Canal
17 and/or by exchange arrangements involving Arvin-Edison Water Storage District or
18 others.

19 (c) DWR shall have no obligation to make exchange arrangements or
20 be responsible for water transported in facilities that are not a part of the SWP.

21 8. MEASUREMENT OF WATER DELIVERED

22 DWR shall measure all water delivered for the Contractor from the California
23 Aqueduct and shall keep and maintain accurate and complete records thereof.

1 9. RESPONSIBILITY FOR DELIVERY AND DISTRIBUTION OF WATER

2 (a) Neither DWR nor any of its officers, agents, or employees shall be
3 liable for the control, carriage, handling, use, disposal, or distribution of water delivered
4 for the Contractor after such water has passed the delivery points established in Article
5 7, nor for claim of damage of any nature whatsoever, including but not limited to
6 property damage, personal injury or death, arising out of or connected with the control,
7 carriage, handling, use, disposal or distribution of such water beyond said delivery
8 structures; and the Contractor shall indemnify and hold harmless DWR and its officers,
9 agents, and employees from any such damages or claims of damages, except for any
10 damage or claim arising out of the sole negligence or willful misconduct of DWR, its
11 officers, agents, employees, or assigns.

12 (b) Neither the Contractor nor any of its officers, agents, or employees
13 shall be liable for the control, carriage, handling, use, disposal, or distribution of water
14 being delivered by DWR before such water has passed the delivery points established
15 in accordance with Article 7; nor for claim of damage of any nature whatsoever,
16 including but not limited to property damage, personal injury or death, arising out of or
17 connected with the control, carriage, handling, use, disposal, or distribution of such
18 water before it has passed said delivery points;

19 (c) The United States shall not be responsible for the conveyance of
20 CVP Water under this Contract, or the control, carriage, handling, use, disposal, or
21 distribution of CVP Water made available for the Contractor beyond the Delta or, if
22 stored in San Luis Reservoir, beyond O'Neill Forebay. The Contractor shall indemnify
23 Reclamation, its officers, employees, agents, and assigns on account of damage or

1 claim of damage of any nature whatsoever for which there is legal responsibility
2 pursuant to this Contract.

3 10. RATES AND METHOD OF PAYMENT FOR CONVEYANCE AND OTHER
4 SERVICES BY DWR

5 (a) The Contractor shall reimburse DWR for all reasonable costs
6 incurred by DWR for Contract preparation to be finally determined after coordination
7 with the Contractor and for providing services to the Contractor pursuant to this Contract
8 regardless of whether DWR delivers any water to the Contractor. Expiration or
9 termination of this Contract shall not affect the obligation of the Contractor to pay all
10 amounts owing to DWR pursuant to this Contract.

11 (b) To the extent CVP Water is conveyed through SWP Facilities,
12 payment of the costs of conveyance of water through the SWP Facilities shall be made
13 by the Contractor directly to DWR. The charges and interest rates applicable upon
14 execution of this Contract are set forth in Exhibit "A."

15 (c) Each Calendar Year DWR shall revise Exhibit "A" and determine
16 the charge per acre-foot for conveyance of water through SWP Facilities pursuant to
17 this Contract as follows:

18 (1) When DWR provides conveyance directly from the Delta, the
19 unit conveyance charge shall equal the sum of the following, as determined by DWR:

20 (i) The equivalent unit transportation capital and
21 Minimum OMP&R Costs for Reaches 1 through applicable reaches, excluding Reach
22 3A, of the California Aqueduct;

23 (ii) The portion of the Delta Water Rate for Reaches 1,

1 2A, 2B and 3 of the California Aqueduct;

2 (iii) The replacement component of the transportation

3 Variable OM&R Costs for Banks and DWR's share of Dos Amigos;

4 (iv) A charge to offset direct fish losses associated with

5 pumping at Banks, pursuant to the December 30, 1986, agreement between the

6 California Department of Fish and Wildlife and DWR;

7 (v) Water System Revenue Bond Surcharge;

8 (vi) Any components or other categories of charges

9 pursuant to this Contract not known at the execution of this Contract, including, but not

10 limited to, those that are identified in the annual Appendix B of DWR Bulletin 132; and

11 (vii) The incremental costs, if any, caused by the

12 conveyance and delivery of CVP Water to the Contractor pursuant to this Contract

13 which, unless included in the charges to the Contractor, would result in increased

14 charges to the SWP Contractors or increased costs to DWR.

15 (2) When DWR provides conveyance directly from the federal

16 share of storage at San Luis Reservoir, the unit conveyance charge shall equal the sum

17 of the following, as determined by DWR:

18 (i) The equivalent unit transportation capital and

19 Minimum OMP&R Costs for Reaches 3 through applicable reaches, excluding Reach

20 3A, of the California Aqueduct;

21 (ii) The portion of the Delta Water Rate for Reach 3 of

22 the California Aqueduct;

23 (iii) The replacement component of the transportation

1 Variable OM&R Costs for DWR's share of Dos Amigos;

2 (iv) Water System Revenue Bond Surcharge;

3 (v) Any components or other categories of charges

4 pursuant to this Contract not known at the execution of this Contract, including, but not
5 limited to, those that are identified in the annual Appendix B of DWR Bulletin 132; and

6 (vi) The incremental costs, if any, caused by the
7 conveyance and delivery of CVP Water to the Contractor pursuant to this Contract
8 which, unless included in the charges to the Contractor, would result in increased
9 charges to the SWP Contractors or increased costs to DWR.

10 (d) DWR shall invoice the Contractor regularly for all conveyance
11 charges owing for the indicated period. Payment by the Contractor to DWR shall be
12 due thirty (30) days after the date of the invoice. Any payment not received within thirty
13 (30) days after the date of the invoice shall be considered delinquent. Delinquent
14 charges shall be calculated in accordance with this Contract; provided, that no interest
15 shall be charged to or be paid by the Contractor unless such delinquency continues for
16 more than thirty (30) days in total.

17 (e) Prior to December 31 of each Calendar Year, DWR shall notify the
18 Contractor in writing of the charges to be in effect during the following Calendar Year,
19 and such notification shall revise Exhibit "A" of this Contract. At the same time DWR
20 shall provide to the Contractor a copy of or access to the then most recent version of
21 Appendix B of DWR Bulletin 132, which is the basis for calculating the charges to the
22 Contractor to be in effect during that Calendar Year.

23 (f) If the Contractor is unable, fails, or refuses to accept delivery of

1 CVP Water conveyed by DWR in accordance with this Contract, such inability, failure,
2 or refusal shall not relieve the Contractor of its obligations to pay DWR all associated
3 costs.

4 (g) The Contractor shall pay DWR a monthly administrative charge
5 specified in Exhibit "A" for each month in which DWR conveys CVP Water to the
6 Contractor and for each month in which DWR invoices the Contractor for delinquent
7 charges.

8 (h) Pursuant to the "Contract Between United States Department of
9 Energy Western Area Power Administration and State of California Department of
10 Water Resources for California Independent System Operator Scheduling Coordinator
11 Services for Joint-Use Facilities of the San Luis Unit and Certain DWR Pumping
12 Facilities" (Contract # 12-SNR-01605), dated June 27, 2012, Western Area Power
13 Administration (Western) agreed to pay DWR for Scheduling Coordinator (SC)
14 California Independent System Operator (CAISO) charges and charges for SC-related
15 services incurred by DWR, and attributable to DWR acting as SC for the federal share
16 of the Joint-Use Facilities and for certain DWR owned or operated pumping facilities to
17 the extent they are used to pump federal water by mutual agreement between DWR
18 and Reclamation. The Parties to this Contract agree that Contract # 12-SNR-01605, as
19 now existing and as amended from time to time, applies to the conveyance of CVP
20 Water under this Contract. If Western fails to pay DWR for charges incurred during the
21 term of Contract #12-SNR-01605, DWR reserves the right to temporarily suspend
22 conveyance under this Contract after providing Reclamation and the Contractor with
23 thirty (30) days' written notice.

1 (1) Prior to the expiration of Contract # 12-SNR-01605,
2 Reclamation and DWR will meet and confer with Western to discuss potential renewal.
3 If Contract #12-SNR-01605 is renewed or a new contract is entered into to pay for the
4 SC CAISO charges and charges for SC-related services, such contract will be the basis
5 for paying these charges under this Contract.

6 (2) If Reclamation, DWR, and Western are unable to reach any
7 such agreement on the payment of SC CAISO charges and charges for SC-related
8 services, DWR reserves the right to suspend conveyance under this Contract after
9 providing Reclamation and the Contractor with thirty (30) days' written notice. In the
10 alternative, the Contractor and DWR may reach agreement on the Contractor's payment
11 obligations for the SC CAISO charges and charges for SC-related services associated
12 with the conveyance of CVP Water pursuant to this Contract, in order to avoid
13 interruption of conveyance.

14 (i) The amount of any overpayment by the Contractor shall be applied
15 first to any balance due by the Contractor to DWR. Any amount of overpayment
16 remaining shall, at the option of the Contractor, be refunded to the Contractor or
17 credited upon amounts to become due to DWR from the Contractor in the following
18 months. With respect to overpayment, such adjustment shall constitute the sole remedy
19 of the Contractor.

20 (j) In the event that the Contractor contests the accuracy of any
21 invoice submitted to it by DWR pursuant to this Contract, it shall give DWR notice
22 thereof at least ten (10) days prior to the day upon which payment of the stated amount
23 is due. To the extent that DWR finds that the Contractor's claims regarding the invoice

1 are correct, DWR shall revise the invoice accordingly, and the Contractor shall make
2 payment of the revised amounts on or before the due date. To the extent that DWR
3 does not find the Contractor's claims correct, or where time is not available for review of
4 such claims for correctness prior to due date, the Contractor shall make payment of the
5 stated amounts on or before the due date, but may make the contested part of such
6 payment under protest and seek to recover the amount from DWR.

7 (k) If in any Calendar Year, by reason of errors in computation or other
8 causes, there is an overpayment or underpayment to DWR by the Contractor of its
9 charges, the amount of such overpayment or underpayment shall be credited or
10 debited, as the case may be, to the Contractor's account for the next succeeding
11 Calendar Year and DWR shall notify the Contractor in writing.

12 11. ASSIGNMENT OF CONTRACT

13 Without the prior written consent of DWR, Reclamation, and the Contractor, this
14 Contract is not assignable in whole or in part.

15 12. MODIFICATION OF CONTRACT

16 No modification of the terms of this Contract shall be valid unless made in writing
17 and signed by the Parties to this Contract.

18 13. PARAGRAPH HEADINGS

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

22 14. OPINIONS AND DETERMINATIONS

23 Where the terms of this Contract provide for actions to be based upon the

1 opinion or determination of any party to this Contract, said terms shall not be construed
2 as permitting such action to be predicated upon arbitrary, capricious, or unreasonable
3 opinions or determinations. As provided in Article 15, the Parties expressly reserve the
4 right to seek relief from and appropriate adjustment for any such arbitrary, capricious or
5 unreasonable opinion or determination. Each opinion or determination by any party to
6 this Contract shall be provided in a timely manner.

7 15. DISPUTE RESOLUTION

8 In the event of a dispute regarding interpretation or implementation of this
9 Contract, a party shall provide written notice of the dispute to the other Parties. The
10 Parties shall endeavor to resolve the dispute by meeting within thirty (30) days of the
11 written notice, or at a later date by mutual written agreement by the Parties. The
12 representative for each party to this meeting shall be an individual authorized by that
13 party to resolve the Contract interpretation or implementation issues. If the dispute is
14 unresolved following the meeting, the authorized signatory of the Contractor or its
15 designee, the Director of DWR and the Regional Director of Reclamation or their
16 designees shall meet within thirty (30) days (Directors' meeting), or at a later date by
17 mutual written agreement of the Parties, after the initial meeting to resolve the dispute.
18 If the dispute still remains unresolved, the Parties may use the services of a mutually
19 acceptable consultant in an effort to resolve the dispute. The Parties shall share the
20 fees and expenses of the consultant equally; provided, however, that the Contractor
21 shall subsequently reimburse DWR's consultant-related costs pursuant to Article 10 of
22 this Contract. If a consultant cannot be agreed upon within ninety (90) days after the
23 Directors' meeting, or if the consultant's recommendations are not acceptable to the

1 Parties, and unless the Parties otherwise agree, the matter may be resolved by
2 litigation, and any party may at its option pursue any available legal remedy, including
3 but not limited to, injunctive and other equitable relief; provided that the process set
4 forth in this Article 15 shall not be required where a delay in commencing an action
5 would prejudice the interests of the party that intends to file suit. Except as specifically
6 provided, nothing herein is intended to waive or abridge any right or remedy that any
7 party may have.

8 16. NOTICES

9 Any notice, demand or request authorized by this Contract shall be in writing and
10 either hand-delivered or sent by United States first class mail, postage prepaid, or by
11 facsimile or electronic mail followed by written notice sent by U.S. mail. Unless and until
12 formally notified otherwise, notices shall be sent to the following addresses:

13 Manager, Project Water Management
14 Department of Water Resources
15 P.O. Box 942836
16 Sacramento, CA 94236-0001

17
18 Contractor (Full name of District)
19 Address
20 City, State, & ZIP Code

21
22 Regional Director, Interior Region 10: California-Great Basin
23 U.S. Department of the Interior Bureau of Reclamation
24 Address

1 City, State, & ZIP Code

2 17. SIGNATURE CLAUSE

3 The signatories represent that they have been appropriately authorized to enter
4 into this Contract on behalf of the party for whom they sign. A copy of the resolution
5 authorizing the Contractor to enter into this Contract shall be delivered to DWR before
6 implementation of this Contract.

DRAFT

1 IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of
2 the day and year first above written.

3 UNITED STATES OF AMERICA

4 By: _____
5 Regional Director, Interior Region 10:
6 California-Great Basin
7 Bureau of Reclamation

8 Approved as to Legal Form and Sufficiency DEPARTMENT OF WATER
9 RESOURCES OF THE STATE OF
10 CALIFORNIA

11 _____ By: _____
12 Chief Counsel Director
13 Department of Water Resources Department of Water Resources

14 (SEAL) INSERT CONTRACTOR HERE

15 By: _____
16 President, Board of Directors

17 Attest:
18 _____
19 Secretary

Appendix B-2

(Updated Draft Proposed USBR WIIN Act Repayment Contract replacement)

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

CONTRACT BETWEEN THE UNITED STATES
AND
LOWER TULE RIVER IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE AND FACILITIES REPAYMENT

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Exhibit A – Map of Contractor’s Service Area

Exhibit B – Rates and Charges

Exhibit C – Repayment Obligation

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

CONTRACT BETWEEN THE UNITED STATES
AND
LOWER TULE RIVER IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE AND FACILITIES REPAYMENT

1 THIS CONTRACT, made this [REDACTED] day of [REDACTED], 20[REDACTED], in pursuance
2 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or
3 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
4 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
5 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
6 October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992
7 (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act
8 (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) (“WIIN Act”), all
9 collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES
10 OF AMERICA, hereinafter referred to as the United States, represented by the officer executing
11 this Contract, hereinafter referred to as the Contracting Officer, and LOWER TULE RIVER
12 IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public agency of the State
13 of California, duly organized, existing, and acting pursuant to the laws thereof with its principal
14 place of business in California;

15 WITNESSETH, That:

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EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the California Central Valley Project (Project), for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2nd] WHEREAS, the United States constructed the Project facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3rd] WHEREAS, as provided herein, Project Water may be made available for the Contractor in the Sacramento-San Joaquin Delta and/or from the Friant Division and delivered to the Contractor through appropriate federal, state and/or local facilities; and

[4th] WHEREAS, the Department of Water Resources of the State of California (DWR) is engaged in the operation of the State Water Project (SWP) pursuant to the laws of the State of California involving the development, transportation, and delivery of water supplies to public agencies throughout the State of California; and

[5th] WHEREAS, the Cross Valley Canal, connecting the California Aqueduct and the Friant-Kern Canal in Kern County, has been constructed by the Contractor and others at no cost to the United States; and

[6th] WHEREAS, the Contractor has the right to use the Cross Valley Canal for conveyance of the Project Water furnished hereunder; and

[7th] WHEREAS, the rights to Project Water were acquired by the United States

39 pursuant to California law for operation of the Project; and

40 [8th] WHEREAS, the Contractor and the United States entered into Contract No.
41 14-06-200-8237A, as amended, which established terms for the delivery to the Contractor of
42 Project Water via the Cross Valley Canal from September 12, 1975, through February 29, 1996;
43 and

44 [9th] WHEREAS, the Contractor and the United States have pursuant to subsection
45 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
46 interim renewal contract(s) identified as Contract No(s). 14-06-200-8237A-IR1 through IR18 the
47 current of which is hereinafter referred to as the Existing Contract, which provided for the
48 continued water service to the Contractor from March 1, 2020 through February 28, 2022; and

49 [10th] WHEREAS, on December 16, 2016, the 114th Congress of the United States of
50 America enacted the WIIN Act; and

51 [11th] WHEREAS, Section 4011(a)(1) provides that “upon request of the contractor, the
52 Secretary of the Interior shall convert any water service contract in effect on the date of
53 enactment of this subtitle and between the United States and a water users’ association
54 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under
55 mutually agreeable terms and conditions.”; and

56 [12th] WHEREAS, Section 4011(a)(1) further provides that “the manner of conversion
57 under this paragraph shall be as follows: (A) Water service contracts that were entered into
58 under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section
59 shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195)”; and
60 “(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of
61 August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a

62 contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

63 [13th] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered into
64 pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment,
65 exchange and transfer contractual rights between the water users’ association [Contractor], and
66 the Bureau of Reclamation, or any rights, obligations, or relationships of the water users’
67 association [Contractor] and their landowners as provided under State law.”; and

68 [14th] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that
69 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water
70 service or repayment contractor to receive water; or (4) except as expressly provided in this
71 section, any obligations under the Federal Reclamation law, including the continuation of
72 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and
73 repayment contractors making prepayments pursuant to this section.”; and

74 [15th] WHEREAS, upon the request of the Contractor, the WIIN Act directs the
75 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water
76 service contracts into repayment contracts, amend existing repayment contracts, and allow
77 contractors to prepay their construction cost obligations pursuant to applicable Federal
78 Reclamation law; and

79 [16th] WHEREAS, the United States has determined that the Contractor has fulfilled all
80 of its obligations under the Existing Contract; and

81 [17th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
82 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
83 reasonable and beneficial use and/or has demonstrated projected future demand for water use
84 such that the Contractor has the capability and expects to utilize fully for reasonable and

85 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;
86 and

87 [18th] WHEREAS, water obtained from the Project has been relied upon by urban and
88 agricultural areas within California for more than 50 years, and is considered by the Contractor
89 as an essential portion of its water supply; and

90 [19th] WHEREAS, the economies of regions within the Project, including the
91 Contractor's, depend upon the continued availability of water, including water service from the
92 Project; and

93 [20th] WHEREAS, the Secretary intends through coordination, cooperation, and
94 partnerships to pursue measures to improve water supply, water quality, and reliability of the
95 Project for all Project purposes; and

96 [21st] WHEREAS, the mutual goals of the United States and the Contractor include: to
97 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
98 repayment of the Project as required by law; to guard reasonably against Project Water
99 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
100 and to comply with all applicable environmental statutes, all consistent with the legal obligations
101 of the United States relative to the Project; and

102 [22nd] WHEREAS, the parties intend by this Contract to develop a more cooperative
103 relationship in order to achieve their mutual goals; and

104 [23rd] WHEREAS, the Contractor has utilized or may utilize transfers, exchanges,
105 contract assignments, rescheduling and conveyance of Project Water and non-Project water
106 under this Contract as tools to minimize the impacts of a Condition of Shortage and to maximize
107 the beneficial use of water (Contractors included); and

108 [24th] WHEREAS, the United States and the Contractor are willing to enter into a
109 separate contract with DWR for conveyance of Project Water through the facilities of the SWP
110 wherein the United States is willing to furnish the necessary power for pumping such water
111 through Harvey O. Banks Pumping Plant and Dos Amigos Pumping Plant pursuant to the then-
112 existing CVP Project use power policy and the terms and conditions specified in such separate
113 contract; and

114 [25th] WHEREAS, the United States and the Contractor understand that DWR is willing
115 to convey such water through State Facilities; and

116 [26th] WHEREAS, the Contracting Officer and the Contractor agree that this Contract
117 complies with Section 4011 of the WIIN Act; and

[27th] WHEREAS, the Contracting Officer and the Contractor agree to amend and
convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal
Reclamation law on the terms and conditions set forth below;

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

120 DEFINITIONS

121 1. When used herein unless otherwise distinctly expressed, or manifestly
122 incompatible with the intent of the parties as expressed in this Contract, the term:

123 (a) “Additional Capital Obligation” shall mean construction costs or other
124 capitalized costs incurred after the Effective Date or not reflected in the Existing Capital
125 Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B) and
126 (a)(3)(B) of the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130
127 Stat. 1628) (“WIIN Act”);

128 (b) "Calendar Year" shall mean the period January 1 through December 31,
129 both dates inclusive;

130 (c) "Charges" shall mean the payments required by Federal Reclamation law
131 in addition to the Rates and Tiered Pricing Component specified in this Contract as determined
132 annually by the Contracting Officer pursuant to this Contract;

133 (d) "Condition of Shortage" shall mean a condition respecting the Project
134 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
135 Contract Total;

136 (e) "Contracting Officer" shall mean the Secretary of the Interior's duly
137 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
138 or regulation;

139 (f) "Contract Total" shall mean the maximum amount of water to which the
140 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

141 (g) "Contractor's Service Area" shall mean the area to which the Contractor is
142 permitted to provide Project Water under this Contract as described in Exhibit "A" attached
143 hereto, which may be modified from time to time in accordance with Article 34 of this Contract
144 without amendment of this Contract;

145 (h) "Cross Valley Canal" shall mean the water conveyance and related works
146 constructed by the Contractor and others to deliver water from the California Aqueduct, which
147 canal currently is operated by Kern County Water Agency;

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

150 (j) "Eligible Lands" shall mean all lands to which Irrigation Water may be

151 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
152 (96 Stat. 1263), as amended;

153 (k) “Excess Lands” shall mean all lands in excess of the limitations contained
154 in Section 204 of the Reclamation Reform Act of 1982, other than those lands exempt from
155 acreage limitation under Federal Reclamation law;

156 (l) “Existing Capital Obligation” shall mean the remaining amount of
157 construction costs or other capitalized costs allocable to the Contractor as described in Section
158 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central
159 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,
160 dated **Month/Day/Year [specify ratebook year for all contractors.] [contractor specific to**
161 **address the intertie]**, as adjusted to reflect payments not reflected in such schedule. The
162 Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in
163 Exhibit “C”, which is incorporated herein by reference;

164 (m) “Full Cost Rate” shall mean an annual rate as determined by the
165 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
166 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M
167 deficits funded, less payments, over such periods as may be required under Federal Reclamation
168 law, or applicable contract provisions. Interest will accrue on both the construction expenditures
169 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
170 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
171 in accordance with subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of 1982.
172 The Full Cost Rate includes actual operation, maintenance, and replacement costs consistent with
173 Section 426.2 of the Rules and Regulations for the Reclamation Reform Act of 1982;

174 (n) "Ineligible Lands" shall mean all lands to which Irrigation Water may not
175 be delivered in accordance with Section 204 of the Reclamation Reform Act of 1982;

176 (o) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable
177 to the delivery of Irrigation Water;

178 (p) "Irrigation Water" shall mean the use of Project Water to irrigate lands
179 primarily for the production of commercial agricultural crops or livestock, and domestic and
180 other uses that are incidental thereto;

181 (q) "Landholder" shall mean a party that directly or indirectly owns or leases
182 nonexempt land, as provided in 43 CFR 426.2;

183 (r) "Municipal and Industrial (M&I) Water" shall mean the use of Project
184 Water for municipal, industrial, and miscellaneous other purposes not falling under the
185 definition of "Irrigation Water" or within another category of water use under an
186 applicable Federal authority

187 or water delivered to land holdings operated in units of less than five acres unless the Contractor
188 establishes to the satisfaction of the Contracting Officer that the use of water delivered to any
189 such landholding is a use described in subdivision (p) of this Article;

190 (s) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to
191 the delivery of M&I Water;

192 (t) "Operation and Maintenance" or "O&M" shall mean normal and
193 reasonable care, control, operation, repair, replacement (other than capital replacement), and
194 maintenance of Project facilities;

195 (u) "Operating Non-Federal Entity" shall mean either the San Luis & Delta
196 Mendota Water Authority or the Friant Water Authority, their successors or assigns, non-Federal
197 entities which have the obligation to operate and maintain all or a portion of the Project facilities
198 pursuant to written agreements with the United States, and which may have funding obligations
199 with respect thereto;

200 (v) "Operations Manual" shall mean the manual developed by DWR and
201 Reclamation setting forth procedures, which shall be consistent with this Contract, for working
202 level communications including scheduling and accounting for power and water services.;

203 (w) "Project" shall mean the Central Valley Project owned by the United
204 States and managed by the Department of the Interior, Bureau of Reclamation;

205 (x) "Project Contractors" shall mean all parties who have contracts for water
206 service for Project Water from the Project with the United States pursuant to Federal
207 Reclamation law;

208 (y) "Project Water" shall mean all water that is developed, diverted, stored, or
209 delivered by the Secretary in accordance with the statutes authorizing the Project and in
210 accordance with the terms and conditions of water rights acquired pursuant to California law;

211 (z) "Rates" shall mean the payments determined annually by the Contracting
212 Officer in accordance with the then-current applicable water ratesetting policies for the Project,
213 as described in subdivision (a) of Article 7 of this Contract;

214 (aa) "Recent Historic Average" shall mean the most recent five-year average of
215 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its
216 preceding contract(s);

217 (bb) "Repayment Obligation" for Water Delivered as Irrigation Water shall
218 mean the Existing Capital Obligation discounted by $\frac{1}{2}$ of the Treasury rate, which shall be the
219 amount due and payable to the United States, pursuant to Section 4011(a)(2)(A) of the WIIN
220 Act; and for Water Delivered as M&I Water shall mean the amount due and payable to the
221 United States, pursuant to Section 4011(a)(3)(A) of the WIIN Act;

222 (cc) "Secretary" shall mean the Secretary of the Interior, a duly appointed

223 successor, or an authorized representative acting pursuant to any authority of the Secretary and
224 through any agency of the Department of the Interior;

225 (dd) “State Facilities” shall mean that portion of the SWP (including DWR's
226 portion of the San Luis Unit joint-use facilities), necessary to convey Project Water from the
227 Sacramento-San Joaquin Delta (Delta) to points of delivery as scheduled pursuant to Article 5 of
228 this Contract;

229 (ee) “State Water Project” or “SWP” shall mean the California State Water
230 Project;

231 (ff) “Tiered Pricing Component” shall be the incremental amount to be paid
232 for each acre-foot of Water Delivered as described in Article 7 of this Contract and as provided
233 for in Exhibit “B”;

234 (gg) “Water Delivered” or “Delivered Water” shall mean Project
235 Water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting
236 Officer;

237 (hh) “Water Made Available” shall mean the estimated amount of Project
238 Water that can be delivered to the Contractor for the upcoming Year as declared by the
239 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

240 (ii) “Water Scheduled” shall mean Project Water made available to the
241 Contractor for which times and quantities for delivery have been established by the Contractor
242 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

243 (jj) “Year” shall mean the period from and including March 1 of each
244 Calendar Year through the last day of February of the following Calendar Year.

245 TERM OF CONTRACT – RIGHT TO USE OF WATER

246 2. (a) This Contract shall be effective [Effective Date], hereinafter known as the
247 “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and Charges
248 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.
249 1195) as applicable, and applicable law;

250 (1) Provided, That the Contracting Officer shall not seek to terminate
251 this Contract for failure to fully or timely pay applicable Rates and Charges by the Contractor,
252 unless the Contracting Officer has first provided at least sixty (60) calendar days written notice
253 to the Contractor of such failure to pay and the Contractor has failed to cure such failure to pay,
254 or to diligently commence and maintain full curative payments satisfactory to the Contracting
255 Officer within the sixty (60) calendar days’ notice period;

256 (2) Provided, further, That the Contracting Officer shall not seek to
257 suspend making water available or declaring Water Made Available pursuant to this Contract for
258 non-compliance by the Contractor with the terms of this Contract or Federal law, unless the
259 Contracting Officer has first provided at least thirty (30) calendar days written notice to the
260 Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence
261 curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully
262 cured within the thirty (30) calendar days’ notice period. If the Contracting Officer has
263 suspended making water available pursuant to this paragraph, upon cure of such non-compliance
264 satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water
265 available and declaring Water Made Available pursuant to this Contract;

266 (3) Provided, further, That this Contract may be terminated at any

267 time by mutual consent of the parties hereto.

268 (b) Upon complete payment of the Repayment Obligation by the Contractor,
269 and notwithstanding any Additional Capital Obligation that may later be established, the acreage
270 limitations, reporting, and Full Cost pricing provisions of the Reclamation Reform Act of 1982,
271 and subdivisions (j) Eligible Lands, (k) Excess Lands, and (n) Ineligible Lands, of Article 1 of
272 this Contract shall no longer be applicable.

273 (c) Notwithstanding any provision of this Contract, the Contractor reserves
274 and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483), to the extent
275 allowed by law.

276 (d) Notwithstanding any provision of this Contract, the Contractor reserves
277 and shall have all rights and benefits under the Act of June 21, 1963 (77 Stat. 68), to the extent
278 allowed by law.

279 WATER TO BE MADE AVAILABLE AND DELIVERED FOR THE CONTRACTOR

280 3. (a) During each Year, consistent with all applicable State water rights,
281 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
282 this Contract, the Contracting Officer shall make available in the Delta for delivery for the
283 Contractor 31,102 acre-feet of Project Water for irrigation and M&I purposes. The quantity of
284 Water Delivered for the Contractor in accordance with this subdivision shall be scheduled,
285 conveyed, and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

286 (b) Because the capacity of the Project to deliver Project Water has been
287 constrained in recent years and may be constrained in the future due to many factors including
288 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
289 Contractor actually receiving the full amount of Project Water set out in subdivision (a) of this

290 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
291 programmatic environmental impact statement prepared pursuant to Section 3404(c) of
292 the CVPIA projected that of the Contract Total set forth in this Contract will not be available for
293 the Contractor in many years. During the most recent five years prior to execution of the
294 Existing Contract, the Recent Historic Average of Water Made Available for the Contractor was
295 8,068 acre-feet. Nothing in this subdivision (b) of this Article shall affect the rights and
296 obligations of the parties under any provision of this Contract.

297 (c) The Contractor shall utilize the Project Water in accordance with all
298 applicable legal requirements.

299 (d) The Contractor shall make reasonable and beneficial use of all water
300 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect or in lieu),
301 groundwater banking programs, surface water storage programs, and other similar programs
302 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
303 Contractor's Service Area which are consistent with applicable State law and result in use
304 consistent with Federal Reclamation law will be allowed; *Provided, That* any direct recharge
305 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
306 Article 25 of this Contract; *Provided, further, That* such water conservation plan demonstrates
307 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
308 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
309 compliance with Federal Reclamation law. Groundwater recharge programs, groundwater
310 banking programs, surface water storage programs, and other similar programs utilizing Project
311 Water or other water furnished pursuant to this Contract conducted outside the Contractor's
312 Service Area may be permitted upon written approval of the Contracting Officer, which approval

313 will be based upon environmental documentation, Project Water rights, and Project operational
314 concerns. The Contracting Officer will address such concerns in regulations, policies, or
315 guidelines.

316 (e) The Contractor shall comply with requirements applicable to the
317 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
318 of any water service contract between the Contracting Officer and the Contractor in effect
319 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered
320 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to
321 implement. The Existing Contract, which evidences in excess of 44 years of diversions for
322 irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of
323 Article 3 of this Contract, will be considered in developing an appropriate baseline for any
324 required biological assessment(s) prepared pursuant to the ESA, and any other needed
325 environmental review. Nothing herein shall be construed to prevent the Contractor from
326 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
327 biological opinion or other environmental documentation referred to in this Article.

328 (f) Following the declaration of Water Made Available under Article 4 of this
329 Contract, the Contracting Officer will make a determination whether Project Water, or other
330 water available to the Project, can be made available for the Contractor in addition to the
331 Contract Total under this Article 3 during the Year without adversely impacting other Project
332 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
333 Contractor prior to making such a determination. If the Contracting Officer determines that
334 Project Water, or other water available to the Project, can be made available for the Contractor,
335 the Contracting Officer will announce the availability of such water and shall so notify the

336 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
337 and other Project Contractors capable of taking such water to determine the most equitable and
338 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
339 water, the Contracting Officer shall make such water available for the Contractor in accordance
340 with applicable statutes, regulations, guidelines, and policies. If the Contracting Officer
341 determines that there is an unusually large water supply not otherwise storable for Project
342 purposes or infrequent and otherwise unmanaged flood flows of short duration from the Friant
343 Division, then Friant Division Project Water may be made available for the Contractor as Section
344 215 Water under Section 215 of the Reclamation Reform Act of 1982 if the Contractor enters
345 into a temporary contract, not to exceed one (1) year, with the United States for the delivery of
346 such water or, as otherwise provided for in Federal Reclamation law and associated regulations:
347 *Provided, That* such water shall be first made available to the Friant Division long-term water
348 service and repayment contractors.

349 (g) The Contractor may request permission to reschedule for use during the
350 subsequent Year some or all of the Water Made Available for the Contractor during the current
351 Year referred to as “rescheduled water”. The Contractor may request permission to use during
352 the current Year a quantity of Project Water which may be made available by the United States
353 for the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s
354 written approval may permit such uses in accordance with applicable statutes, regulations,
355 guidelines, and policies.

356 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
357 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract shall
358 not be disturbed, and this Contract shall continue so long as the Contractor pays applicable Rates

359 and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of August 4,
360 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall
361 affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of
362 Article 12 of this Contract.

363 (i) Project Water furnished for the Contractor pursuant to this Contract may
364 be delivered for purposes other than those described in subdivisions (p) and (r) of Article 1 of
365 this Contract upon written approval by the Contracting Officer in accordance with the terms and
366 conditions of such approval.

367 (j) The Contracting Officer shall make reasonable efforts to protect the water
368 rights necessary for the Project and to provide the water available under this Contract. The
369 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
370 extent permitted by law, in administrative proceedings related to the Project Water rights;
371 *Provided, That* the Contracting Officer retains the right to object to the substance of the
372 Contractor's position in such a proceeding. *Provided further; That* in such proceedings the
373 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
374 Contract to use Project Water.

375 (k) Conveyance and/or storage of Project Water for the Contractors may be
376 provided subject to terms and conditions of a separate conveyance contract among a Contractor,
377 the United States, and DWR.

378 (l) If in any Year after the Contracting Officer has approved a schedule or
379 any revision thereof submitted in accordance within subdivision (a) and (b) of Article 4 of this
380 Contract, and if the Contracting Officer is unable to make water available in the quantities and at
381 the times requested in the schedule and the Contractor does not elect to receive and does not

382 receive such water at other times during such Year, then the Contractor shall be entitled to
383 adjustment(s) for overpayment as provided in subdivision (c) of Article 7 and Article 10 of this
384 Contract.

385 TIME FOR DELIVERY OF WATER

386 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
387 shall announce the Contracting Officer's expected declaration of the Water Made Available.
388 Such declaration will be expressed in terms of both Water Made Available and the Recent
389 Historic Average and will be updated monthly, and more frequently if necessary, based on the
390 then-current operational and hydrologic conditions and a new declaration with changes, if any, to
391 the Water Made Available will be made. The Contracting Officer shall provide forecasts of
392 Project operations and the basis of the estimate, with relevant supporting information, upon the
393 written request of the Contractor. Concurrently with the declaration of the Water Made
394 Available, the Contracting Officer shall provide the Contractor with the updated Recent Historic
395 Average. The declaration of Project operations will be expressed in terms of both Water Made
396 Available and the Recent Historic Average.

397 (b) On or before each March 1 and at such other times as necessary, the
398 Contractor shall submit to the Contracting Officer and to DWR a written schedule, satisfactory to
399 the Contracting Officer. The written schedule shall show the monthly quantities of Project
400 Water to be delivered by the United States for the Contractor pursuant to this Contract for the
401 Year commencing on such March 1. The Contracting Officer shall use all reasonable means to
402 deliver Project Water according to the approved schedule for the Year commencing on such
403 March 1.

404 (c) The Contractor shall not schedule Project Water in excess of the quantity

405 of Project Water the Contractor intends to put to reasonable and beneficial use within the
406 Contractor's Service Area, pursuant to Article 3 or to sell, transfer or exchange pursuant to
407 Article 5 and Article 9 of this Contract during any Year.

408 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
409 Contract, the United States shall deliver Project Water for the Contractor in accordance with the
410 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any
411 written revision(s) thereto satisfactory to the Contracting Officer, submitted within a reasonable
412 time prior to the date(s) on which the requested change(s) is/are to be implemented.

413 (e) Scheduling and delivery of Project Water for the Contractor shall be in
414 accordance with guidelines set forth in the Operations Manual as it may be amended from time
415 to time. The total amount of Project Water made available to DWR for the Contractor by the
416 Contracting Officer shall include water by the Contracting Officer to compensate DWR for water
417 conveyance losses incurred in conveyance of Project Water for the Contractor.

418 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

419 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
420 Contract shall be delivered for the Contractor at a point or points of delivery either on Project
421 facilities or another location or locations mutually agreed to in writing by the Contracting Officer
422 and the Contractor. The parties acknowledge that Project Water to be furnished for the
423 Contractor pursuant to this Contract shall be delivered to the Contractor by direct delivery via the
424 Cross Valley Canal and/or by exchange arrangements involving Arvin-Edison Water Storage
425 District or others. The parties further acknowledge that such exchange arrangements are not
426 transfers subject to Section 3405(a) of CVPIA. Such exchange arrangements, other than the
427 previously approved exchange arrangements with Arvin-Edison Water Storage District approved

428 by Assistant Regional Director, J. Robert Hammond, on December 4, 1974, shall be submitted to
429 the Contracting Officer for approval prior to the implementation of the proposed exchange.

430 (b) Omitted.

431 (1) To the extent that Friant Division Project Water exceeds Friant
432 Division Contract demand and other Project purposes, as determined by the Contracting Officer
433 and after consultation with the Contractor, if the Contractor so requests, the Contracting Officer,
434 subject to subdivision (d) of Article 3 of this Contract, shall make Project Water provided for in
435 subdivision (a) of Article 3 of this Contract available from such Friant Division supplies.

436 (2) As determined solely by the Contracting Officer, and after
437 consultation with the Contractor, Project Water may be provided to the Contractor, at the
438 Contractor's request and subject to the terms and conditions of this Contract, through Federal
439 Delta diversion and conveyance facilities and/or re-regulated in the Federal share of storage at
440 San Luis Reservoir for later delivery to the Contractor.

441 (c) The Contractor shall deliver Irrigation Water in accordance with any
442 applicable land classification provisions of Federal Reclamation law and the associated
443 regulations. The Contractor shall not deliver Project Water to land outside the Contractor's
444 Service Area unless approved in advance by the Contracting Officer.

445 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
446 measured and recorded with equipment furnished, installed, operated, and maintained by the
447 Contracting Officer either directly or indirectly through its written agreements(s) with the
448 Operating Non-Federal Entity/Entities, unless undertaken by the Contractor with the
449 consent of the Contracting Officer at the point or points of delivery established pursuant to
450 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting

451 Officer shall investigate, or cause to be investigated by the appropriate Operating Non-Federal
452 Entity/Entities, the accuracy of such measurements and shall take any necessary steps to adjust
453 any errors appearing therein. For any period of time when accurate measurements have not been
454 made, the Contracting Officer shall consult with the Contractor and the appropriate Operating
455 Non-Federal Entity/Entities, if any, prior to making a final determination of the quantity
456 delivered for that period of time.

457 (e) Neither the Contracting Officer nor any Operating Non-Federal
458 Entity/Entities shall be responsible for the control, carriage, handling, use, disposal, or
459 distribution of Water Delivered to the Contractor pursuant to this Contract beyond the point or
460 points of delivery established pursuant to subdivision (a) of this Article. The Contractor shall
461 indemnify the United States, its officers, employees, agents, and assigns on account of damage or
462 claim of damage of any nature whatsoever for which there is legal responsibility, including
463 property damage, personal injury, or death arising out of or connected with the control, carriage,
464 handling, use, disposal, or distribution of such Water Delivered beyond such point or points of
465 delivery, except for any damage or claim arising out of: (i) acts or omissions of the Contracting
466 Officer or any of its officers, employees, agents, or assigns, including the Operating Non-Federal
467 Entity/Entities, with the intent of creating the situation resulting in any damage or claim; (ii)
468 willful misconduct of the Contracting Officer or any of its officers, employees, agents, or
469 assigns, including the Operating Non-Federal Entity/Entities; (iii) negligence of the Contracting
470 Officer or any of its officers, employees, agents, or assigns including the Operating Non-Federal
471 Entity/Entities; or (iv) damage or claims resulting from a malfunction of facilities owned and/or
472 operated by the United States or the Operating Non-Federal Entity/Entities; *Provided, That* the
473 Contractor is not the Operating Non-Federal Entity that owned or operated the malfunctioning

474 facility(ies) from which the damage claim arose.

475 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

476 6. (a) The Contractor has established a measuring program satisfactory to the
477 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
478 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
479 water delivered for M&I purposes is measured at each M&I service connection. The water
480 measuring devices or water measuring methods of comparable effectiveness must be acceptable
481 to the Contracting Officer. The Contractor shall be responsible for installing, operating, and
482 maintaining and repairing all such measuring devices and implementing all such water
483 measuring methods at no cost to the United States. The Contractor shall use the information
484 obtained from such water measuring devices or water measuring methods to ensure its proper
485 management of the water, to bill water users for water delivered by the Contractor; and, if
486 applicable, to record water delivered for M&I purposes by customer class as defined in the
487 Contractor's water conservation plan provided for in Article 25 of this Contract. Nothing herein
488 contained, however, shall preclude the Contractor from establishing and collecting any charges,
489 assessments, or other revenues authorized by California law. The Contractor shall include a
490 summary of all its annual surface water deliveries in the annual report described in subdivision
491 (c) of Article 25 of this Contract.

492 (b) To the extent the information has not otherwise been provided, upon
493 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
494 report describing the measurement devices or water measuring methods being used or to be used
495 to implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
496 service connections or alternative measurement programs approved by the Contracting Officer,

497 at which such measurement devices or water measuring methods are being used, and, if
498 applicable, identifying the locations at which such devices and/or methods are not yet being used
499 including a time schedule for implementation at such locations. The Contracting Officer shall
500 advise the Contractor in writing within sixty (60) days as to the adequacy of, and necessary
501 modifications, if any, of the measuring devices or water measuring methods identified in the
502 Contractor's report and if the Contracting Officer does not respond in such time, they shall be
503 deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices
504 or methods are inadequate, the parties shall within sixty (60) days following the Contracting
505 Officer's response, negotiate in good faith the earliest practicable date by which the Contractor
506 shall modify said measuring devices and/or measuring methods as required by the Contracting
507 Officer to ensure compliance with subdivision (a) of this Article.

508 (c) All new surface water delivery systems installed within the Contractor's
509 Service Area after the Effective Date shall also comply with the measurement provisions
510 described in subdivision (a) of this Article.

511 (d) The Contractor shall inform the Contracting Officer and the State of
512 California in writing by April 30 of each Year of the monthly volume of surface water delivered
513 within the Contractor's Service Area during the previous Year.

514 (e) The Contractor shall inform the Contracting Officer and the Operating
515 Non-Federal Entity/Entities on or before the 20th calendar day of each month of the quantity of
516 Irrigation Water and M&I Water taken during the preceding month.

517 RATES, METHOD OF PAYMENT FOR WATER AND ACCELERATED REPAYMENT OF
518 FACILITIES

519 7. (a) Notwithstanding the Contractor's full prepayment of the
520 Repayment Obligation pursuant to Section 4011, subsection (a)(2)(A) and subsection

521 (a)(3)(A) of the WIIN Act, as set forth in Exhibit “C”, and any payments required
522 pursuant to Section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for
523 the final cost allocation as described in this Article, subsection (b), the Contractor’s
524 Project construction and other obligations shall be determined in accordance with: (i)
525 the Secretary’s ratesetting policy for Irrigation Water adopted in 1988 and the Secretary’s
526 then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such
527 ratesetting policies shall be amended, modified, or superseded only through a public
528 notice and comment procedure; (ii) applicable Federal Reclamation law and associated
529 rules and regulations, or policies, and (iii) other applicable provisions of this Contract.
530 Payments shall be made by cash transaction, electronic funds transfers, or any other
531 mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.
532 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon
533 execution of this Contract are set forth in Exhibit “B”, as may be revised annually.

534 (1) The Contractor shall pay the United States as provided for in this
535 Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing
536 Component in accordance with policies for Irrigation Water and M&I Water. The Contractor’s
537 Rates shall be established to recover its estimated reimbursable costs included in the operation
538 and maintenance component of the Rate and amounts established to recover deficits and other
539 charges, if any, including construction costs as identified in the following subdivisions.

540 (2) In accordance with the WIIN Act, the Contractor’s allocable share
541 of Project construction costs will be repaid pursuant to the provisions of this Contract.

542 (A) The amount due and payable to the United States, pursuant
543 to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been

544 computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth
545 as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual
546 installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date as
547 set forth in Exhibit "C". **There could be one or two exhibits in most cases due to more than**
548 **one service area [For Irrigation contractors and M&I contractors]** The Repayment
549 Obligation is due in lump sum by **[Month Day, Year]** as provided by the WIIN Act. The
550 Contractor must provide appropriate notice to the Contracting Officer in writing no later than
551 thirty (30) days prior to **[Month Day, Year] [Division Level: consider the effective date of**
552 **the contract being converted]** if electing to repay the amount due using the lump sum
553 alternative. If such notice is not provided by such date, the Contractor shall be deemed to have
554 elected the installment payment alternative, in which case, the first such payment shall be made
555 no later than **[Month Day, Year] [Division Level: consider the effective date of the contract**
556 **being converted]**. The second payment shall be made no later than the first anniversary of the
557 first payment date. The third payment shall be made no later than the second anniversary of the
558 first payment date. The final payment shall be made no later than **[Month Day, Year] [no later**
559 **than the third anniversary of the effective date of the contract]**. If the installment payment
560 option is elected by the Contractor, the Contractor may pre-pay the remaining portion of the
561 Repayment Obligation by giving the Contracting Officer sixty (60) days written notice, in which
562 case, the Contracting Officer shall re-compute the remaining amount due to reflect the pre-
563 payment using the same methodology as was used to compute the initial annual installment
564 payment amount, which is illustrated in Exhibit "C". Notwithstanding any Additional Capital
565 Obligation that may later be established, receipt of the Contractor's payment of the Repayment
566 Obligation to the United States shall fully and permanently satisfy the Existing Capital

567 Obligation.

568 (B) Additional Capital Obligations that are not reflected in, the
569 schedules referenced in Exhibit “C” and properly assignable to the Contractor, shall be repaid as
570 prescribed by the WIIN Act without interest except as required by law. Consistent with Federal
571 Reclamation law, interest shall continue to accrue on the M&I portion of the Additional Capital
572 Obligation assigned to the Contractor until such costs are paid. Increases or decreases in the
573 Additional Capital Obligation assigned to the Contractor caused solely by annual adjustment of
574 the Additional Capital Obligation assigned to each Project contractor by the Secretary shall not
575 be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B),
576 however, will be considered under subdivision (b) of this Article. A separate agreement shall be
577 established by the Contractor and the Contracting Officer to accomplish repayment of the
578 Additional Capital Obligation assigned to the Contractor within the timeframe prescribed by the
579 WIIN Act, subject to the following:

580 (1) If the collective Additional Capital Obligation
581 properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act
582 is less than five million dollars (\$5,000,000), then the portion of such costs properly assignable
583 to the Contractor shall be repaid not more than five (5)-years after the Contracting Officer
584 notifies the Contractor of the Additional Capital Obligation; *Provided, That* the reference to the
585 amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

586 (2) If the collective Additional Capital Obligation
587 properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act
588 is equal to or greater than five million dollars (\$5,000,000), then the portion of such costs
589 properly assignable to the Contractor shall be repaid as provided by applicable Federal

590 Reclamation law and Project ratesetting policy; *Provided, That* the reference to the amount of
591 five million dollars (\$5,000,000) shall not be a precedent in any other context.

592 (b) In the event that the final cost allocation referenced in Section 4011(b) of
593 the WIIN Act determines that the costs properly assignable to the Contractor are greater than
594 what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining
595 allocated costs. The term of such additional repayment contract shall be not less than one (1)
596 year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate
597 of repayment of such amount may be developed by the Contractor and Contracting Officer. In
598 the event that the final cost allocation indicates that the costs properly assignable to the
599 Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such
600 overpayment as an offset against any outstanding or future obligations of the Contractor, with the
601 exception of Restoration Fund charges pursuant to Section 3407(d) of Pub. L. 102-575.

602 (c) The Contracting Officer shall notify the Contractor of the Rates, Charges,
603 and Tiered Pricing Component as follows:

604 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
605 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
606 period October 1, of the current Calendar Year, through September 30, of the following Calendar
607 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
608 to review and comment on such estimates. On or before September 15 of each Calendar Year,
609 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
610 the period October 1 of the current Calendar Year, through September 30, of the following
611 Calendar Year, and such notification shall revise Exhibit "B".

612 (2) Prior to October 1 of each Calendar Year, the Contracting Officer

613 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component
614 for Project Water for the following Year and the computations and cost allocations upon which
615 those Rates are based. The Contractor shall be allowed not less than two months to review and
616 comment on such computations and cost allocations. By December 31 of each Calendar Year,
617 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing
618 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B".

619 (d) At the time the Contractor submits the Contractor's initial schedule for the
620 delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract,
621 the Contractor shall make an advance payment to the United States equal to the total amount
622 payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project
623 Water scheduled to be delivered pursuant to this Contract during the first two calendar months of
624 the Year. Before the end of the first month and before the end of each calendar month thereafter,
625 the Contractor shall make an advance payment to the United States, at the Rate(s) set under
626 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
627 during the second month immediately following. Adjustments between advance payments for
628 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
629 the following month; *Provided, That* any revised schedule submitted by the Contractor pursuant
630 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
631 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
632 then in effect, to assure that Project Water is not delivered for the Contractor in advance of such
633 payment. In any month in which the quantity of Water Delivered for the Contractor pursuant to
634 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
635 additional Project Water shall be delivered for the Contractor unless and until an advance

636 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
637 between the advance payments for the Water Scheduled and payments for the quantities of Water
638 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
639 later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water
640 carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by
641 the last day of February.

642 (e) The Contractor shall also make a payment in addition to the Rate(s) in
643 subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the
644 appropriate Tiered Pricing Component then in effect, before the end of the month following the
645 month of delivery; *Provided, That* the Contractor may be granted an exception from the Tiered
646 Pricing Component pursuant to subdivision (k)(2) of this Article. The payments shall be
647 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the
648 water delivery report for the subject month prepared by the Operating Non-Federal
649 Entity/Entities or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The
650 water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered
651 Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of
652 Charges shall be made through the adjustment of payments due to the United States for Charges
653 for the next month. Any amount to be paid for past due payment of Charges and the Tiered
654 Pricing Component shall be computed pursuant to Article 19 of this Contract.

655 (f) The Contractor shall pay for any Water Delivered under subdivision (a),
656 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
657 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
658 policies; *Provided, That* the Rate for Water Delivered under subdivision (f) of Article 3 of this

659 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water
660 under subdivision (a) of this Article.

661 (g) Payments to be made by the Contractor to the United States under this
662 Contract may be paid from any revenues available to the Contractor.

663 (h) All revenues received by the United States from the Contractor relating to
664 the delivery of Project Water or the delivery of non-Project water through Project facilities shall
665 be allocated and applied in accordance with Federal Reclamation law and the associated rules or
666 regulations, and the then-current Project ratesetting policies for M&I Water or Irrigation Water.

667 (i) The Contracting Officer shall keep its accounts pertaining to the
668 administration of the financial terms and conditions of its long-term contracts, in accordance
669 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
670 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
671 Contractor a detailed accounting of all Project and Contractor expense allocations, the
672 disposition of all Project and Contractor revenues, and a summary of all water delivery
673 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
674 to resolve any discrepancies or disputes relating to accountings, reports, or information.

675 (j) The parties acknowledge and agree that the efficient administration of this
676 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
677 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,
678 and/or for making and allocating payments, other than those set forth in this Article may be in
679 the mutual best interest of the parties, it is expressly agreed that the parties may enter into

680 agreements to modify the mechanisms, policies, and procedures for any of those purposes while
681 this Contract is in effect without amending this Contract.

682 (k) (1) Beginning at such time as deliveries of Project Water in a Year
683 exceed 80 percent of the Contract Total, then before the end of the month following the month of
684 delivery the Contractor shall make an additional payment to the United States equal to the
685 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
686 Delivered in excess of eighty (80) percent of the Contract Total, but less than or equal to ninety
687 (90) percent of the Contract Total, shall equal the one-half of the difference between the Rate
688 established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I
689 Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the amount of
690 Water Delivered which exceeds ninety (90) percent of the Contract Total shall equal the
691 difference between (i) the Rate established under subdivision (a) of this Article and (ii) the
692 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. For all
693 Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
694 eighty (80) percent of the Contract Total, this increment shall be deemed to be divided between
695 Irrigation Water and M&I Water in the same proportion as actual deliveries of each bear to the
696 cumulative total Water Delivered.

697 (2) Subject to the Contracting Officer's written approval, the
698 Contractor may request and receive an exemption from such Tiered Pricing Component for
699 Project Water delivered to produce a crop which the Contracting Officer determines will provide
700 significant and quantifiable habitat values for waterfowl in fields where the water is used and the
701 crops are produced; *Provided, That* the exemption from the Tiered Pricing Component for
702 Irrigation Water shall apply only if such habitat values can be assured consistent with the

703 purposes of the CVPIA through binding agreements executed with or approved by the
704 Contracting Officer prior to use of such water.

705 (3) For purposes of determining the applicability of the Tiered Pricing
706 Component pursuant to this Article, Water Delivered shall include Project Water that the
707 Contractor transfers to others, but shall not include Project Water transferred to the Contractor,
708 nor shall it include the additional water provided to the Contractor under the provisions of
709 subdivision (f) of Article 3 of this Contract.

710 (l) For the term of this Contract, Rates applied under the respective
711 ratesetting policies will be established to recover only reimbursable O&M (including any
712 deficits) and capital costs of the Project, as those terms are used in the then-current Project
713 ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is
714 applicable in accordance with the relevant Project ratesetting policy. Changes of significance in
715 practices which implement the Contracting Officer's ratesetting policies will not be implemented
716 until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,
717 need, and impact of the proposed change.

718 (m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
719 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's
720 Rates, in accordance with the applicable Project ratesetting policy, adjusted upward or
721 downward to reflect the changed costs if any incurred by the Contracting Officer in the delivery
722 of the transferred Project Water to the transferee's point of delivery in accordance with the then-
723 current Project ratesetting policy. In addition, if the Contractor is receiving lower Rates and
724 Charges because of inability to pay and is transferring Project Water to another entity whose
725 Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred

726 Project Water shall be the Contractor's Rates and Charges and will not be adjusted to reflect the
727 Contractor's inability to pay.

728 (n) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
729 Officer is authorized to adjust determinations of ability to pay every five years.

730 (o) With respect to the Rates for M&I Water the Contractor asserts that it is
731 not legally obligated to pay any Project deficits claimed by the United States to have accrued as
732 of the date of this Contract or deficit-related interest charges thereon. By entering into this
733 Contract, the Contractor does not waive any legal rights or remedies that it may have with
734 respect to such disputed issues. Notwithstanding the execution of this Contract and payments
735 made hereunder, the Contractor may challenge in the appropriate administrative or judicial
736 forums: (1) the existence, computation, or imposition of any deficit charges accruing during the
737 term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2)
738 interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in
739 the Rates; (4) the application by the United States of payments made by the Contractor under its
740 Existing Contract and any preceding interim renewal contracts, if applicable; and (5) the
741 application of such payments in the Rates. The Contracting Officer agrees that the Contractor
742 shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project
743 M&I contractor on any of these issues, and credits for payments heretofore made, *Provided, That*
744 the basis for such ruling is applicable to the Contractor.

745 NON-INTEREST BEARING O&M DEFICITS

746 8. The Contractor and the Contracting Officer concur that, as of the Effective Date,
747 the Contractor has no non-interest-bearing O&M deficits and shall have no further liability
748 therefore.

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SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent all appropriate environmental documentation including but not limited to documents prepared pursuant to NEPA and ESA. Such environmental documentation should include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation including, but not limited to, documents prepared pursuant to NEPA and ESA analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer’s compliance determination shall be reviewed every five years and

772 updated, as necessary, prior to the expiration of the then-existing five (5)- year period. All
773 subsequent environmental documentation shall include an alternative to evaluate not less than the
774 quantity of Project Water historically transferred within the same geographical area.

775 (c) For a water transfer to qualify under subdivision (b) of this Article, such
776 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
777 years, for M&I use, groundwater recharge, groundwater banking, similar groundwater activities,
778 surface water storage, or fish and wildlife resources; not lead to land conversion; and be
779 delivered to established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur
780 within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water
781 through existing facilities with no new construction or modifications to facilities and be between
782 existing Project Contractors and/or the Contractor and the United States, Department of the
783 Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and
784 requirements imposed for protection of the environment and Indian Trust Assets, as defined
785 under Federal law.

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APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment, at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water supply provided for by this Contract. All credits and refunds of overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 24 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the additional costs pursuant to Article 24 of this Contract.

TEMPORARY REDUCTIONS – RETURN FLOWS

11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the requirements of Federal law; and (ii) the obligations of the United States under existing contracts, or renewals thereof, providing for water deliveries from the Project; and (iii) the terms

809 and conditions of this Contract; the Contracting Officer shall make all reasonable efforts to
810 optimize Project Water deliveries for the Contractor as provided in this Contract.

811 (b) The Contracting Officer or Operating Non-Federal Entity/Entities may
812 temporarily discontinue or reduce the quantity of Water Delivered for the Contractor as herein
813 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any
814 of the Project facilities or any part thereof necessary for the delivery of Project Water for the
815 Contractor, but so far as feasible the Contracting Officer, or Operating Non-Federal
816 Entity/Entities will give the Contractor due notice in advance of such temporary discontinuance
817 or reduction, except in case of emergency, in which case no notice need be given; *Provided, That*
818 the United States shall use its best efforts to avoid any discontinuance or reduction in such
819 service. Upon resumption of service after such reduction or discontinuance, and if requested by
820 the Contractor, the United States will, if possible, deliver the quantity of Project Water which
821 would have been delivered hereunder in the absence of such discontinuance or reduction.

822 (c) The United States reserves the right to all seepage and return flow water
823 derived from Water Delivered to the Contractor hereunder which escapes or is discharged
824 beyond the Contractor's Service Area; *Provided, That* this shall not be construed as claiming for
825 the United States any right to seepage or return flow being put to reasonable and beneficial use
826 pursuant to this Contract within the Contractor's Service Area by the Contractor or those
827 claiming by, through, or under the Contractor.

828 CONSTRAINTS ON THE AVAILABILITY OF WATER

829 12. (a) In its operation of the Project, the Contracting Officer will use all
830 reasonable means to guard against a Condition of Shortage in the quantity of Project Water to be
831 made available to the Contractor pursuant to this Contract. In the event the Contracting Officer
832 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
833 Contractor of said determination as soon as practicable.

834 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting
835 or other similar operational errors affecting the Project; drought, and other physical or natural
836 causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer
837 to meet current and future legal obligations, then, except as provided in subdivision (a) of Article
838 17 of this Contract, no liability shall accrue against the United States or any of its officers,
839 agents, or employees for any damage, direct or indirect, arising therefrom.

840 (c) In any Year in which there may occur a Condition of Shortage for any of
841 the reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion the
842 available Project Water supply among the Contractors and others entitled, under existing
843 contracts and future contracts (to the extent such future contracts are permitted under subsections
844 (a) and (b) of Section 3404 of the CVPIA) and renewals thereof, to receive Project Water
845 consistent with the contractual obligations of the United States.

846 (d) To the extent applicable, Project Water furnished under this Contract will
847 be allocated in accordance with the then-existing Project M&I Water Shortage Policy. Such
848 policy shall be amended, modified, or superseded only through a public notice and comment
849 procedure.

850 (e) By entering into this Contract, the Contractor does not waive any legal
851 rights or remedies it may have to file or participate in any administrative or judicial proceeding
852 contesting: (i) the sufficiency of the then-current Project M&I Water Shortage Policy; (ii) the
853 substance of such a policy; or (iii) the applicability of such a policy. By agreeing to the
854 foregoing, the Contracting Officer does not waive any legal defenses or remedies that it may then
855 have to assert in such a proceeding.

856 UNAVOIDABLE GROUNDWATER PERCOLATION

857 13. (a) To the extent applicable, the Contractor shall not be deemed to have
858 delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this

859 Contract if such lands are irrigated with groundwater that reaches the underground strata as an
860 unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

861 (b) Upon complete payment of the Repayment Obligation by the Contractor,
862 this Article 13 shall no longer be applicable.

863 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

864 14. The parties agree that the delivery of Irrigation Water or use of Federal facilities
865 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the
866 Reclamation Reform Act of 1982 (43 U.S.C. 390aa, et seq.), as amended and supplemented, and
867 the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation
868 law.

869 PROTECTION OF WATER AND AIR QUALITY

870 15. (a) Omitted.

871 (b) The United States will care for, operate and maintain reserved works in a
872 manner that preserves the quality of the water at the highest level possible as determined by the
873 Contracting Officer. The United States does not warrant the quality of the water delivered to the
874 Contractor and is under no obligation to furnish or construct water treatment facilities to
875 maintain or improve the quality of water delivered to the Contractor.

876 (c) The Contractor will comply with all applicable water and air pollution
877 laws and regulations of the United States and the State of California; and shall obtain all required
878 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
879 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,
880 State, and local water quality standards applicable to surface and subsurface drainage and/or
881 discharges generated through the use of Federal or Contractor facilities or Project Water
882 provided by the Contractor within the its Service Area.

883 (d) This Article shall not affect or alter any legal obligations of the Secretary
884 to provide drainage or other discharge services.

885 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED
886 STATES

887 16. (a) Water or water rights now owned or hereafter acquired by the Contractor
888 other than from the United States and Irrigation Water furnished pursuant to the terms of this
889 Contract may be simultaneously transported through the same distribution facilities of the

890 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
891 and non-project water were constructed without funds made available pursuant to Federal
892 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
893 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive
894 Irrigation Water must be established through the certification requirements as specified in the
895 Acreage Limitation Rules and Regulations (43 CFR Part 426); and (iii) the water requirements of
896 Eligible Lands within the Contractor's Service Area can be established and the quantity of
897 Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such
898 Eligible Lands. The Contractor and the Contracting Officer concur that the Contractor's
899 distribution system was constructed without funds made available pursuant to Federal
900 Reclamation law. The use of this distribution system is not subject to the provisions of this
901 subdivision of this Article.

902 (b) Water or water rights now owned or hereafter acquired by the Contractor,
903 other than from the United States or adverse to the Project or its contractors (i.e. non-project
904 water), may be stored, conveyed, and/or diverted through Project facilities, subject to the
905 completion of appropriate environmental documentation, with the approval of the Contracting
906 Officer and the execution of any contract determined by the Contracting Officer to be necessary,
907 consistent with the following provisions:

908 (1) The Contractor may introduce non-Project water into Project
909 facilities and deliver said water to lands within the Contractor's Service Area, including
910 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating
911 Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting
912 policy, the Reclamation Reform Act of 1982, and the Project use power policy, if such

913 Project use power policy is applicable, each as amended, modified, or superseded from time to
914 time.

915 (2) Delivery of such non-Project water in and through Project facilities
916 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
917 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
918 available to other Project Contractors; (iii) interfere with the delivery of contractual water
919 entitlements to any other Project Contractors; or (iv) interfere with the physical maintenance of
920 the Project facilities.

921 (3) Neither the United States nor the Operating Non-Federal
922 Entity(ies) shall be responsible for control, care, or distribution of the non-Project water before it
923 is introduced into or after it is delivered from the Project facilities. The Contractor hereby
924 releases and agrees to defend and indemnify the United States and the Operating Non-Federal
925 Entity(ies), and their respective officers, agents, and employees, from any claim for damage to
926 persons or property, direct or indirect, resulting from the act(s) of the Contractor its officers,
927 employees, agents or assigns, in (i) extracting or diverting non-Project water from any source, or
928 (ii) diverting such non-Project water into Project facilities.

929 (4) Diversion of such non-Project water into Project facilities shall be
930 consistent with all applicable laws, and if involving groundwater, consistent with any applicable
931 groundwater management plan for the area from which it was extracted.

932 (5) After Project purposes are met, as determined by the Contracting
933 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity
934 of the facilities declared to be available by the Contracting Officer for conveyance and

935 transportation of non-Project water prior to any such remaining capacity being made available to
936 non-Project contractors.

937 (c) Upon complete payment of the Repayment Obligation by the Contractor,
938 subdivision (a) of this Article 16 shall no longer be applicable.

939 OPINIONS AND DETERMINATIONS

940 17. (a) Where the terms of this Contract provide for actions to be based upon the
941 opinion or determination of either party to this Contract, said terms shall not be construed as
942 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
943 determinations. The parties, notwithstanding any other provisions of this Contract, expressly
944 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
945 or unreasonable opinion or determination. Each opinion or determination by either party shall be
946 provided in a timely manner. Nothing in subdivision (a) of this Article 17 is intended to or shall
947 affect or alter the standard of judicial review applicable under Federal law to any opinion or
948 determination implementing a specific provision of Federal law embodied in statute or
949 regulation.

950 (b) The Contracting Officer shall have the right to make determinations
951 necessary to administer this Contract that are consistent with the provisions of this Contract, the
952 laws of the United States and of the State of California, and the rules and regulations
953 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation
954 with the Contractor to the extent reasonably practicable.

955 COORDINATION AND COOPERATION

956 18. (a) In order to further their mutual goals and objectives, the Contracting
957 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and

958 with other affected Project Contractors, in order to improve the O&M of the Project. The
959 communication, coordination, and cooperation regarding O&M shall include, but not be limited
960 to, any action which will or may materially affect the quantity or quality of Project Water supply,
961 the allocation of Project Water supply, and Project financial matters including, but not limited to,
962 budget issues. The communication, coordination, and cooperation provided for hereunder shall
963 extend to all provisions of this Contract. All parties shall retain exclusive decision making
964 authority for all actions, opinions, and determinations to be made by the respective party.

965 (b) Within one-hundred twenty (120) days following the Effective Date, the
966 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
967 with interested Project Contractors to develop a mutually agreeable, written Project-wide
968 process, which may be amended as necessary separate and apart from this Contract. The goal of
969 this process shall be to provide, to the extent practicable, the means of mutual communication
970 and interaction regarding significant decisions concerning Project O&M on a real-time basis.

971 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
972 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this
973 intent:

974 (1) The Contracting Officer will, at the request of the Contractor,
975 assist in the development of integrated resource management plans for the Contractor. Further,
976 the Contracting Officer will, as appropriate, seek authorizations for implementation of
977 partnerships to improve water supply, water quality, and reliability.

978 (2) The Secretary will, as appropriate, pursue program and project
979 implementation and authorization in coordination with Project Contractors to improve the water
980 supply, water quality, and reliability of the Project for all Project purposes.

981 (3) The Secretary will coordinate with Project Contractors and the
982 State of California to seek improved water resource management.

983 (4) The Secretary will coordinate actions of agencies within the
984 Department of the Interior that may impact the availability of water for Project purposes.

985 (5) The Contracting Officer shall periodically, but not less than
986 annually, hold division level meetings to discuss Project operations, division level water
987 management activities, and other issues as appropriate.

988 (d) Without limiting the contractual obligations of the Contracting Officer
989 under the other Articles of this Contract, nothing in this Article shall be construed to limit or
990 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the
991 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to
992 protect health, safety, or the physical integrity of structures or facilities.

993 CHARGES FOR DELINQUENT PAYMENTS

994 19. (a) The Contractor shall be subject to interest, administrative, and penalty
995 charges on delinquent payments. If a payment is not received by the due date, the Contractor
996 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
997 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in
998 addition to the interest charge, an administrative charge to cover additional costs of billing and
999 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor
1000 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the
1001 payment is delinquent beyond the due date, based on the remaining balance of the payment due
1002 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt
1003 collection services associated with a delinquent payment.

1004 (b) The interest rate charged shall be the greater of either the rate prescribed
1005 quarterly in the Federal Register by the Department of the Treasury for application to overdue
1006 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be
1007 determined as of the due date and remain fixed for the duration of the delinquent period.

1008 (c) When a partial payment on a delinquent account is received, the amount
1009 received shall be applied first to the penalty charges, second to the administrative charges, third
1010 to the accrued interest, and finally to the overdue payment.

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EQUAL EMPLOYMENT OPPORTUNITY

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20. During the performance of this Contract, the Contractor agrees as follows:

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(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

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(c) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

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

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(e) The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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(f) The Contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain

1050 compliance with such rules, regulations, and orders.

1051 (g) In the event of the Contractor's noncompliance with the nondiscrimination
1052 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
1053 canceled, terminated or suspended in whole or in part and the Contractor may be declared
1054 ineligible for further Government contracts in accordance with procedures authorized in
1055 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and
1056 remedies invoked as provided in Executive Order No. 11246 of Sept. 24, 1965 or by rule,
1057 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1058 (h) The Contractor will include the provisions of paragraphs (a) through (g) in
1059 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1060 Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24,
1061 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor
1062 will take such action with respect to any subcontract or purchase order as may be directed by the
1063 Secretary of Labor as a means of enforcing such provisions, including sanctions for
1064 noncompliance: *Provided, however, That* in the event the Contractor becomes involved in, or is
1065 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
1066 Contractor may request the United States to enter into such litigation to protect the interests of
1067 the United States.

1068 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

1069 21. (a) The obligation of the Contractor to pay the United States as provided in
1070 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1071 obligation may be distributed among the Contractor's water users and notwithstanding the default
1072 of individual water users in their obligation to the Contractor.

1073 (b) The payment of charges becoming due pursuant to this Contract is a
1074 condition precedent to receiving benefits under this Contract. The United States shall not make
1075 water available to the Contractor through Project facilities during any period in which the
1076 Contractor is in arrears in the advance payment of water rates due the United States. The
1077 Contractor shall not deliver water under the terms and conditions of this Contract for lands or
1078 parties that are in arrears in the advance payment of water rates as levied or established by the
1079 Contractor.

1080 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1081 obligation to require advance payment for water rates which it levies.

1082 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1083 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1084 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
1085 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
1086 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.

1087 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
1088 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
1089 Interior and/or Bureau of Reclamation.

1090 (b) These statutes prohibit any person in the United States from being
1091 excluded from participation in, being denied the benefits of, or being otherwise subjected to
1092 discrimination under any program or activity receiving financial assistance from the Bureau of
1093 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
1094 Contract, the Contractor agrees to immediately take any measures necessary to implement this
1095 obligation, including permitting officials of the United States to inspect premises, programs, and
1096 documents.

1097 (c) The Contractor makes this Contract in consideration of and for the
1098 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1099 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1100 Reclamation, including installment payments after such date on account of arrangements for
1101 Federal financial assistance which were approved before such date. The Contractor recognizes
1102 and agrees that such Federal assistance will be extended in reliance on the representations and
1103 agreements made in this Article and that the United States reserves the right to seek judicial
1104 enforcement thereof.

1105 (d) Complaints of discrimination against the Contractor shall be investigated
1106 by the Contracting Officer's Office of Civil Rights.

1107 PRIVACY ACT COMPLIANCE

1108 23. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act)
1109 (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act
1110 (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting records required
1111 to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the
1112 Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43
1113 C.F.R. § 426.18.

1114 (b) With respect to the application and administration of the criminal penalty
1115 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's
1116 employees who are responsible for maintaining the certification and reporting records referenced
1117 in paragraph (a) above are considered to be employees of the Department of the Interior. See 5
1118 U.S.C. § 552a(m).

1119 (c) The Contracting Officer or a designated representative shall provide the
1120 Contractor with current copies of the Department of the Interior Privacy Act regulations and the
1121 Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-
1122 31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of
1123 information contained in the Landholders' certification and reporting records.

1124 (d) The Contracting Officer shall designate a full-time employee of the

1125 Bureau of Reclamation to be the System Manager responsible for making decisions on denials
1126 pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72.
1127 The Contractor is authorized to grant requests by individuals for access to their own records.

1128 (e) The Contractor shall forward promptly to the System Manager each
1129 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records
1130 filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the
1131 System Manager with information and records necessary to prepare an appropriate response to
1132 the requester. These requirements do not apply to individuals seeking access to their own
1133 certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless
1134 the requester elects to cite the Privacy Act as authority for the request.

1135 (f) Upon complete payment of the Repayment Obligation by the
1136 Contractor, this Article 23 will no longer be applicable.

1137 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1138 24. In addition to all other payments to be made by the Contractor pursuant to this
1139 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a
1140 bill and detailed statement submitted by the Contracting Officer to the Contractor for such
1141 specific items of direct cost incurred by the United States for work requested by the Contractor
1142 associated with this Contract plus indirect costs in accordance with applicable Bureau of
1143 Reclamation policies and procedures. All such amounts referred to in this Article shall not
1144 exceed the amount agreed to in writing in advance by the Contractor. This Article shall not
1145 apply to costs for routine contract administration.

1146 WATER CONSERVATION

1147 25. (a) Prior to the delivery of water provided from or conveyed through
1148 Federally constructed or Federally financed facilities pursuant to this Contract, the
1149 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the
1150 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and
1151 Regulations).

1152 Additionally, an effective water conservation and efficiency program shall be based on the
1153 Contractor's water conservation plan that has been determined by the Contracting Officer to

1154 meet the conservation and efficiency criteria for evaluating water conservation plans
1155 established under Federal law. The water conservation and efficiency program shall contain
1156 definite water conservation objectives, appropriate economically feasible water conservation
1157 measures, and time schedules for meeting those objectives. Continued Project Water delivery
1158 pursuant to this Contract shall be contingent upon the Contractor's continued implementation of
1159 such water conservation program. In the event the Contractor's water conservation plan or any
1160 revised water conservation plan completed pursuant to subdivision (d) of this Article 25 have not
1161 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
1162 the Contracting Officer determines are beyond the control of the Contractor, water deliveries
1163 shall be made under this Contract so long as the Contractor diligently works with the Contracting
1164 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
1165 immediately begins implementing its water conservation and efficiency program in accordance
1166 with the time schedules therein.

1167 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1168 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1169 Contractor shall implement the Best Management Practices identified by the time frames issued
1170 by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such
1171 M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate
1172 for the Contractor.

1173 (c) The Contractor shall submit to the Contracting Officer a report on the
1174 status of its implementation of the water conservation plan on the reporting dates specified in the
1175 then existing conservation and efficiency criteria established under Federal law.

1176 (d) At five (5)-year intervals, the Contractor shall revise its water

1177 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1178 water conservation plans established under Federal law and submit such revised water
1179 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1180 will then determine if the water conservation plan meets Reclamation's then-existing
1181 conservation and efficiency criteria for evaluating water conservation plans established under
1182 Federal law.

1183 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1184 shall be described in the Contractor's water conservation plan.

1185 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1186 26. Except as specifically provided in Article 16 of this Contract, the provisions of
1187 this Contract shall not be applicable to or affect non-project water or water rights now owned or
1188 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1189 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1190 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1191 any water user within the Contractor's Service Area acquires or has available under any other
1192 contract pursuant to Federal Reclamation law.

1193 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY(IES)

1194 27. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1195 and responsibility for funding a portion of the costs of such O&M, have been transferred to two
1196 Operating Non-Federal Entities by separate agreement between the United States and the
1197 Operating Non-Federal Entities. Those separate agreements shall not interfere with or affect the
1198 rights or obligations of the Contractor or the United States hereunder. Specifically, portions of
1199 the Delta-Mendota Canal, the San Luis Canal and other related facilities are operated by the San

1200 Luis & Delta Mendota Water Authority and the Friant-Kern Canal and related facilities are
1201 operated by the Friant Water Authority.

1202 (b) The Contracting Officer has previously notified the Contractor in writing
1203 that the O&M of a portion of the Project facilities which serve the Contractor has been
1204 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1205 to the applicable Operating Non-Federal Entity(ies), or to any successor(s) approved by the
1206 Contracting Officer under the terms and conditions of the separate agreement(s) between the
1207 United States and the Operating Non-Federal Entity(ies) described in subdivision (a) of this
1208 Article, all rates, charges, or assessments of any kind, including any assessment for reserve
1209 funds, which the Operating Non-Federal Entity(ies) or such successor(s) determines, sets, or
1210 establishes for the O&M of the portion of the Project facilities operated and maintained by the
1211 Operating Non-Federal Entity or such successor. Such direct payments to the Operating Non-
1212 Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly
1213 to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1214 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf
1215 of the United States in accordance with the separate agreement identified in subdivision (a) of
1216 this Article.

1217 (c) For so long as the O&M of any portion of the Project facilities serving the
1218 Contractor is performed by the Operating Non-Federal Entity(ies), or any successor(s) thereto,
1219 the Contracting Officer shall adjust those components of the Rates for Water Delivered under
1220 this Contract representing the cost associated with the activity being performed by the Operating
1221 Non-Federal Entity(ies) or its (their) successor(s).

1222 (d) In the event the O&M of the Project facilities operated and maintained by
1223 the Operating Non-Federal Entity(ies) is re-assumed by the United States during the term of this
1224 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1225 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1226 Contractor for Project Water under this Contract representing the O&M costs of the portion of
1227 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1228 absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1229 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the
1230 United States in compliance with Article 7 of this Contract.

1231 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1232 28. The expenditure or advance of any money or the performance of any obligation of
1233 the United States under this Contract shall be contingent upon appropriation or allotment of
1234 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1235 obligations under this Contract. No liability shall accrue to the United States in case funds are
1236 not appropriated or allotted.

1237 BOOKS, RECORDS, AND REPORTS

1238 29. (a) The Contractor shall establish and maintain accounts and other books and
1239 records pertaining to administration of the terms and conditions of this Contract, including the
1240 Contractor's financial transactions; water supply data; project operations, maintenance, and
1241 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1242 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
1243 Officer may require Reports shall be furnished to the Contracting Officer in such form and on
1244 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
1245 and regulations, each party to this Contract shall have the right during office hours to examine
1246 and make copies of the other party's books and records relating to matters covered by this
1247 Contract.

1248 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1249 books, records, or other information shall be requested from the Contractor by the Contracting
1250 Officer unless such books, records, or information are reasonably related to the administration or

1251 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1252 time within which to provide the requested books, records, or information.

1253 (c) At such time as the Contractor provides information to the Contracting Officer
1254 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1255 Operating Non-Federal Entity(ies).

1256 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1257 30. (a) The provisions of this Contract shall apply to and bind the successors and
1258 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1259 therein by either party shall be valid until approved in writing by the other party.

1260 (b) The assignment of any right or interest in this Contract by either party
1261 shall not interfere with the rights or obligations of the other party to this Contract absent the
1262 written concurrence of said other party.

1263 (c) The Contracting Officer shall not unreasonably condition or withhold
1264 approval of any proposed assignment.

1265 SEVERABILITY

1266 31. In the event that a person or entity who is neither (i) a party to a Project contract,
1267 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1268 (iii) an association or other form of organization whose primary function is to represent parties to
1269 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1270 enforceability of a provision included in this Contract and said person, entity, association, or
1271 organization obtains a final court decision holding that such provision is legally invalid or
1272 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1273 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of
1274 such final court decision identify by mutual agreement the provisions in this Contract which

1275 must be revised and (ii) within three months thereafter promptly agree on the appropriate
1276 revision(s). The time periods specified above may be extended by mutual agreement of the
1277 parties. Pending the completion of the actions designated above, to the extent it can do so
1278 without violating any applicable provisions of law, the United States shall continue to make the
1279 quantities of Project Water specified in this Contract available to the Contractor pursuant to the
1280 provisions of this Contract which were not found to be legally invalid or unenforceable in the
1281 final court decision.

1282 RESOLUTION OF DISPUTES

1283 32. Should any dispute arise concerning any provisions of this Contract, or the
1284 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1285 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1286 Officer referring any matter to the Department of Justice, the party shall provide to the other
1287 party thirty (30) days written notice of the intent to take such action; *Provided, That* such notice
1288 shall not be required where a delay in commencing an action would prejudice the interests of the
1289 party that intends to file suit. During the thirty (30) day notice period, the Contractor and the
1290 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as
1291 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the
1292 Contractor or the United States may have.

1293 OFFICIALS NOT TO BENEFIT

1294 33. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1295 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1296 same manner as other water users or landowners.

1297 CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1298 34. (a) While this Contract is in effect, no change may be made in the

1299 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1300 changes which may affect the respective rights, obligations, privileges, and duties of either the
1301 United States or the Contractor under this Contract including, but not limited to, dissolution,
1302 consolidation, or merger, except upon the Contracting Officer's written consent.

1303 (b) Within thirty (30) days of receipt of a request for such a change, the
1304 Contracting Officer will notify the Contractor of any additional information required by the
1305 Contracting Officer for processing said request, and both parties will meet to establish a mutually
1306 agreeable schedule for timely completion of the process. Such process will analyze whether the
1307 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1308 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1309 Contract or to pay for any Federally-constructed facilities for which the Contractor is
1310 responsible; and (iii) have an impact on any Project Water rights applications, permits, or
1311 licenses. In addition, the Contracting Officer shall comply with NEPA and ESA. The
1312 Contractor will be responsible for all costs incurred by the Contracting Officer in this process,
1313 and such costs will be paid in accordance with Article 24 of this Contract.

1314 FEDERAL LAWS

1315 35. By entering into this Contract, the Contractor does not waive its rights to contest
1316 the validity or application in connection with the performance of the terms and conditions of this
1317 Contract of any Federal law or regulation; *Provided, That* the Contractor agrees to comply with
1318 the terms and conditions of this Contract unless and until relief from application of such Federal
1319 law or regulation to the implementing provision of the Contract is granted by a court of
1320 competent jurisdiction.

1321 RECLAMATION REFORM ACT OF 1982

1322 36. (a) Upon a Contractor's compliance with and discharge of the Repayment
1323 Obligation pursuant to this Contract, subsections (a) and (b) of Section 213 of the Reclamation

1324 Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

1325 (b) The obligation of a Contractor to pay the Additional Capital Obligation
1326 shall not affect the Contractor's status as having repaid all of the construction costs assignable to
1327 the Contractor or the applicability of subsections (a) and (b) of Section 213 of the Reclamation
1328 Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

1329 CERTIFICATION OF NONSEGREGATED FACILITIES

1330 37. The Contractor hereby certifies that it does not maintain or provide for its
1331 employees any segregated facilities at any of its establishments and that it does not permit its
1332 employees to perform their services at any location under its control where segregated facilities
1333 are maintained. It certifies further that it will not maintain or provide for its employees any
1334 segregated facilities at any of its establishments and that it will not permit its employees to
1335 perform their services at any location under its control where segregated facilities are
1336 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
1337 Employment Opportunity clause in this Contract. As used in this certification, the term
1338 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
1339 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
1340 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
1341 facilities provided for employees which are segregated by explicit directive or are in fact
1342 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
1343 disability, or otherwise. The Contractor further agrees that (except where it has obtained
1344 identical certifications from proposed subcontractors for specific time periods) it will obtain
1345 identical certifications from proposed subcontractors prior to the award of subcontracts
1346 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment
1347 Opportunity clause; that it will retain such certifications in its files; and that it will forward the
1348 following notice to such proposed subcontractors (except where the proposed subcontractors
1349 have submitted identical certifications for specific time periods):

1350 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
1351 CERTIFICATIONS OF NONSEGREGATED FACILITIES

1352 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract
1353 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment
1354 Opportunity clause. The certification may be submitted either for each subcontract or for all
1355 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
1356 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1357 NOTICES

1358 38. Any notice, demand, or request authorized or required by this Contract shall be
1359 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or

1360 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1361 California 93721 and on behalf of the United States, when mailed, postage prepaid, or delivered
1362 to the Board of Directors, Lower Tule River Irrigation District, 357 East Olive Avenue, Tipton,
1363 CA 93272. The designation of the addressee or the address may be changed by notice given in
1364 the same manner as provided in this article for other notices.

1365 MEDIUM FOR TRANSMITTING PAYMENT

1366 39. (a) All payments from the Contractor to the United States under this Contract
1367 shall be by the medium requested by the United States on or before the date payment is due. The
1368 required method of payment may include checks, wire transfers, or other types of payment
1369 specified by the United States.

1370 (b) Upon execution of the Contract, the Contractor shall furnish the
1371 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1372 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1373 out of the Contractor's relationship with the United States.

1374 CONTRACT DRAFTING CONSIDERATIONS

1375 40. This amended Contract has been negotiated and reviewed by the parties hereto,
1376 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1377 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1378 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1379 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1380 CONFIRMATION OF CONTRACT

1381 41. Promptly after the execution of this amended Contract, the Contractor shall
1382 provide to the Contracting Officer a certified copy of a final decree of a court of competent
1383 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor
1384 for the authorization of the execution of this amended Contract. This amended Contract shall not
1385 be binding on the United States until the Contractor secures a final decree.

