

A G R E E M E N T

USE OF BASINS FOR GROUNDWATER RECHARGE

THIS AGREEMENT, made and entered into this 17th day of Aug., 1999, by and between the FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a public corporation, hereinafter referred to as "District," and the CITY OF CLOVIS, a public corporation, hereinafter referred to as "City";

W I T N E S S E T H

WHEREAS, District and City have a continuing vital interest in matters pertaining to water resources in the Fresno-Clovis Metropolitan area; and

WHEREAS, the depletion of the underground water supply within the water service area of the City is related to the total groundwater deficiencies of the Fresno-Clovis metropolitan area; and

WHEREAS, the District is charged with the responsibility pursuant to Section 73-7 of the Water Code Appendix to capture and recharge to groundwater, the various surface waters within the District for beneficial use; and

WHEREAS, the parties desire to establish and maintain an effective and comprehensive community-wide groundwater recharge program designed to correct the above mentioned deficiency; and

WHEREAS, City has surface water entitlements that can be used for such purposes; and

WHEREAS, District has acquired and will continue to acquire land to be used primarily as storm water reservoirs and retention basins, hereinafter referred to as "basins", for the disposal of storm and flood waters; and

WHEREAS, the use of the basins for groundwater recharge purposes under certain specified terms and conditions will not interfere with their primary intended use by District; and

WHEREAS, District is an active participant in various groundwater recharge programs and is willing to receive into said basins such surface water as may be safely discharged therein for recharge into the underground by City, subject and subordinate to the storm water uses of the basins; and

WHEREAS, the parties hereto are willing to enter into a cooperative program of such groundwater recharge activities; and

WHEREAS, District and City wish to amend that certain Agreement titled "Supplemental Agreement No. 1" by and between the District and the City dated August 1, 1991;

NOW, THEREFORE, in consideration of the mutual benefits to be derived by each of the parties hereto, IT IS HEREBY AGREED as follows:

1. **Use of Basins.** City shall have the right, under the terms and conditions hereinafter specified, to discharge water for the purpose of groundwater recharge into those basins or portions thereof designated on Exhibit "A" attached hereto and made a part hereof. By mutual consent, the parties hereto, acting through the District General Manager and the City Manager, may from time-to-time modify and supplement said Exhibit "A" to add or delete basins or portions thereof for the purpose of groundwater recharge, and all of the terms and provisions hereof shall apply to such amendments and supplements.

All District basin sites, located within the City's Sphere of Influence, which are not specifically identified on Exhibit "A" as recharge sites may be utilized for groundwater recharge sites, through amendment of Exhibit "A" as herein provided, until such time as the City indicates in writing to the District its desire to permanently designate the site for recreational uses or to otherwise terminate the delivery of City's recharge waters to said site.

Any permanent designation of a site for recreational use shall be by a determination of the City Council.

The District retains the right to determine the use of any basin site and utilize the site for uses contrary to the City's choice of uses if, in the sole determination of the District, a different use is necessary for the District objects and purposes and for protection of public health, safety or welfare. Such contrary use shall, however, be consistent with the City's land use plan for area. The District shall consult and review with City any proposed uses of basins for purposes other than groundwater recharge or passive/active recreation.

The use of a basin for groundwater recharge, as herein provided, shall not preclude its ultimate use for other purposes such as, but not limited to, recreation and park uses.

2. **Use of Specified Facilities in Conjunction with Use of Basins.** In conjunction with the use by City of District basins, City shall have the right, under the terms and conditions specified herein, to utilize those District facilities designated on Exhibit "B" attached hereto and made a part hereof for conveying waters for groundwater recharge. By mutual consent, the parties hereto, acting through the General Manager and City Manager, may from time-to-time modify or delete facilities from said Exhibit "B" as they become unavailable for the purpose of conveying waters for groundwater recharge, or to add facilities as they are developed or become

available for conveying waters for groundwater recharge, and all of the terms and provisions hereof shall apply to such modifications and supplements.

3. **Priority of Rights.** City shall not use said basins and facilities in a manner that will interfere with the use thereof by District for the pursuit of the objects and purposes of the District. The use of said basins by City shall at all times be subordinate to such use thereof by District. The District recognizes that the City has a vested interest in use of said basins for recharge purposes and agrees to work with the City to the extent practical to make such facilities available for said use. The District shall in its sole discretion determine the availability of the basins and facilities for use by City.

4. **Construction and Maintenance.**

(a) City, at no expense to District, may construct and shall thereafter maintain and repair any connections or facilities constructed by City solely necessary to convey and discharge water for recharge into said basins. District agrees to participate on an equitable basis in the cost of facilities constructed by the City which will be used in part by the District for its purposes, whether or not said joint use results in the up-sizing of any facility or portions thereof. District shall refund a portion of the cost, to be determined on an equitable basis, of any facility paid for entirely by City, but later used by the District for its purposes. For purposes of this Agreement, equitable basis shall mean a proration of costs based on proportionate flow, percentage of use, or some other basis that the parties hereto agree upon. Such connections and facilities shall be constructed in accordance with plans and specifications approved in writing by District.

District shall have no responsibility to maintain, repair, or reconstruct any such connections or facilities constructed solely for the purpose of conveying and discharging water for recharge into said basins. District and City agree to share on an equitable basis the cost of maintaining, repairing or reconstructing any facility jointly used. Any such connections or facilities placed upon easements or property of the District by City shall remain the property of City and may be removed by City at its election provided that such property can be removed without damage to property of District.

(b) Should modification of basins or related improvements by City be necessary to accomplish the purposes of this Agreement, the expense of such installation and the maintenance thereof shall be the sole responsibility of City, except in cases where such modification or improvements are determined by the District to be of joint benefit to the District and City, in which case District and City may enter into a separate agreement to share said expenses on an equitable basis. Upon termination by the City of the use of such improvements or modifications, the City, at its sole expense shall restore the basins and related improvements of District to their former condition; provided, however, that by mutual consent, the parties may agree to permit the improvements or modifications to remain for future use by District. For facilities mutually used by District and City, both parties agree to share on an equitable basis the cost of removal and restoration if it is determined by District that said facilities need to be removed.

(c) District shall at such time as determined by the District, install thereon and in and upon the surrounding streets, to District's standard specifications (except for work

which will become property of the City, which work will be to City specifications) and at District's expense, the following improvements:

(i) Perimeter fences and gates necessary for safety purposes to provide adequate control of ingress to the drainage basin and to provide adequate access from adjacent public streets. Such fences shall allow full visibility of the interior of the drainage basin from adjacent street areas.

(ii) Street improvements as required by Title 7 - "Public Works" of the Clovis Municipal Code.

(iii) For those basins agreed to by District and City that will not ultimately be converted to passive or active recreation use, but remain as recharge sites, District will at its expense install an automatic sprinkler system for irrigation of lawns and trees in the upper portion of such drainage basins. District may (i) connect to the City water system and shall pay all applicable connection and monthly water use charges required by the Clovis Municipal Code for connection of the sprinkler system to City's water system and/or (ii) with City approval install its own on-site well, and/or (iii) use a surface water supply for such irrigation.

(iv) Lawn and trees as required for appearance, control of erosion and environmental value.

5. **Reimbursements**. Should the District enter into any agreement for the use of its basins and facilities for recharge activities with more than one party after one or more such parties have expended funds for installation of improvements necessary to discharge surface waters into District facilities, any party or parties subsequently entering into such agreement shall

pay a proportionate share of such total installation cost to District. Such installation costs shall be divided equally among the parties using such improvements, irrespective of the total discharges to be made by each party through such improvements. Upon receipt of such payments, District shall distribute such monies among the previous parties based on their proportionate contributions to the initial installation costs.

6. **Damage to Basins and Facilities.** In the event damage occurs to District basins or facilities as a result of City's use under this Agreement, City, at its sole expense, shall repair such damage as promptly as practicable. In the event that such damage is due to the sole negligence of the District, the District shall at its expense, repair such damage as promptly as practicable. Insofar as is identifiable that the use of said basins and facilities by the City for groundwater recharge purposes contributes to aquatic growth or mosquito breeding problems, City shall pay District its fair and equitable share, as mutually agreed by District and City, of the cost to control such conditions.

7. **Maintenance of Basins Used for Recharge.** District shall perform all maintenance necessitated by the use of basins for recharge purposes. City agrees to pay the District a maintenance fee equaling \$1.25 per acre-foot of water delivered for recharge, prior to January 1, 2000, and \$2.50 per acre-foot of water delivered for recharge after December 31, 1999. Such charges shall be computed based on the surface water delivery records maintained by the Fresno Irrigation District (FID), or by District where such records are not provided by FID. In no event shall such maintenance fees paid by City be used for purposes other than recharge-related maintenance (such as removal of silts from the basin floor to enhance recharge) of the basins identified in Exhibit "A". Said maintenance fee rate may be amended as necessary to reflect the

costs to District of providing the recharge maintenance of basins required by this Agreement. District shall notify City in writing no later than January 1 of each year that the maintenance fee rate is to be amended.

8. **Maintenance Schedule.** Basins used for recharge purposes shall be maintained by the District so that the surface of the basins is in such condition as to reasonably permit the maximum recharge of surface waters into the underground. The frequency of such maintenance shall be determined by the District, but shall be no more frequent than once each year and no less than once every three years. A maintenance schedule shall be provided to City by District indicating the estimated timing of each basin maintenance period. Insofar as is predictable, the maintenance schedule shall maximize the amount of time the basin(s) are available for recharge. The schedule shall be discussed with City staff for the purpose of determining the priority in which basins will be maintained. Upon completion of such maintenance for any particular basin and determination of availability by the District, the District shall provide written notice to City of its availability.

9. **Water.** City may discharge water into said basins only at such times and in such amounts as specified in the schedule attached hereto as Exhibit "C" and made a part hereof. The scheduled discharges may be made pursuant to prior notice to and approval of the District Manager. District, acting through its Manager, shall have the right by written notice to modify said Exhibit "C".

City shall not discharge into any District basin or facility any water that in the District's sole opinion is unacceptable, including without limitation, any water that has an offensive odor or that contains any waste materials or that might cause contamination or pollution

problems under the rules and regulations of the Central Valley Regional Water Quality Control Board or the Health Department of the County of Fresno, or other regulatory authority.

10. **Hold Harmless.** District shall have no liability or responsibility for any damage or injury to persons or property that, without negligence on the part of District, result directly or indirectly from the discharge of water by City into District basins and facilities. Each party hereto shall indemnify and hold the other free of and harmless from any loss, cost, damage, or expense including reasonable attorneys' fees and costs, that may be caused to the other because of any injury or damage to persons or property arising from the negligence or fault of the indemnifying party in connection with the operation or use of any of the District basins and facilities.

11. **Sale and Option.** District shall have the right at any time to sell or otherwise dispose of any of the properties owned by it upon which a basin or facility is located, if such property is not longer needed or used for drainage purposes; provided, however, that if the District proposes to sell or permanently dispose of such property, the District shall grant to City, as to any properties conveyed to the District per Supplemental Agreement No. 1 by and between the District and the City dated August 1, 1991, the first right of reconveyance for a purchase price of said property at the fair market value of such site at the time of such reconveyance. In the event that the District sells any such basin properties conveyed per said Supplemental Agreement No. 1, the proceeds from such sale shall be utilized by the District for drainage facilities within the City.

The provisions of this paragraph shall not apply to situations where the District exchanges property to reconfigure a basin site, provided that the area of the property disposed of

through such exchange does not exceed the area of the property acquired by more than ten percent (10%).

12. **Termination.** This Agreement shall remain in effect until terminated by either party pursuant to the provisions of this paragraph. Either party may determine in its sole discretion that this Agreement conflicts with the then current responsibilities, programs or powers of said party, and may terminate this Agreement by giving two (2) years written notice to the other party. In the event that District shall determine that any basin or portion thereof subject to this Agreement is required for another public use that is incompatible with the recharge use provided by this Agreement, the District may terminate this Agreement as to such basin or facility upon giving sixty (60) days written notice to City, provided said other public use is necessary for the District objects and purposes and for protection of public health, safety, or welfare. However, in the event the City has constructed and funded improvements to facilitate the delivery of recharge water to a particular basin, this Agreement may not be terminated with respect to such site prior to five (5) years after the date of such construction. The District agrees to consider any proposal by the City to eliminate any such incompatibility prior to termination with respect to any particular basin.

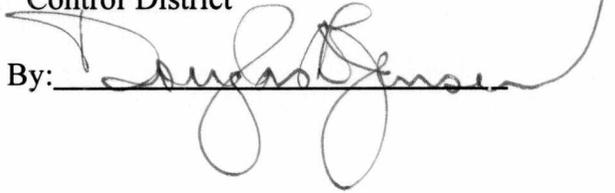
13. **Notice.** Any notice required under this Agreement to be given in writing may be served upon District by mailing the same by certified mail addressed to District at its principal office to the attention of its General Manager. Any notice required to be given in writing under this Agreement may be served upon City by mailing the same by certified mail addressed to the City at its principal office, to the attention of the City Manager.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of

the day and year first above written.

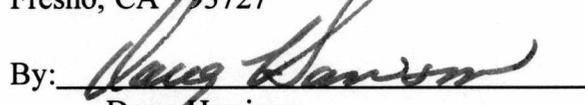
Approved as to Form:
BAKER, MANOCK AND JENSEN
Attorneys for the Flood
Control District

By: _____



FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT
5469 East Olive Avenue
Fresno, CA 93727

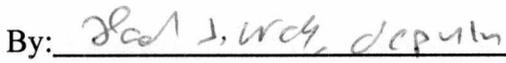
By: _____



Doug Harrison
General Manager-Secretary

CITY OF CLOVIS
1033 Fifth Street
Clovis, CA 93612

By: _____



City Attorney

By: _____



City Manager

By: _____



City Clerk

BASINS AVAILABLE FOR RECHARGE USE

<u>Basin*</u>	<u>Location</u>
S (on recreation basin list also dual use ok)	Northeast corner of Ashlan and Peach
BC	Willow and Teague
BT	Southeast corner of Nees and Marion
2D	East side Clovis Avenue North of Gould Canal
3A	West side of Helm North of Shaw
3D	Southwest corner Sunnyside and Hoblitt
3F	Northeast corner Laverne and Shaw
3G	Barstow and Locan
4E (on recreation basin list also dual use ok)	Southwest corner of Bullard and Fowler
5B/5C	South side of Sierra East of Villa
5F (on recreation basin list also dual use ok)	Southeast corner Vartikian and Fowler Avenues
6D (on recreation basin list also dual use ok)	South side of Sierra East of Clovis Avenue
7C	South side of Alluvial West of Clovis Avenue
1G	Temperance Avenue north of the Gould Canal
7D	Herndon/Armstrong

* Basin designations are those as shown on the Storm Drainage and Flood Control Master Plan.

EXHIBIT "A"

**SCHEDULE OF
FACILITIES TO BE USED TO TRANSPORT
IRRIGATION WATER TO RECHARGE BASINS**

Drainage Area	Pipeline Location	Approximate Limits	Length	Pipeline
Basins Connected to Surface Water Delivery System				
S	@ Basin	Gould Canal to Basin	100'	24"
BC	(Future)			
BT	Clovis Recharge	Dry Creek	800'	42"
2D	Clovis Avenue	Gould Canal to Basin	50' 295'	15" 24"
3A	Shaw/Helm Avenues	Dry Creek to Basin	125'	30"
3D	Sunnyside/Hoblitt Avenues	Jefferson Canal to Basin	N/A	N/A
3F	Shaw Avenue	Dawson Ditch to Basin	380'	24"
3G	(Future)			
4E	Fowler Avenue	S. Branch Clovis Ditch No. 379 to Basin	N/A	N/A
5B/5C	Minnewawa Avenue/ Dry Creek	Dry Creek to Basin	650' 650'	18" 42"
5F	Fowler/Escalon	S. Branch Clovis Ditch No. 379 to Basin	N/A	N/A
6D	Sunnyside Avenue	S. Branch Clovis Ditch No. 115 to Basin	2590' 685'	36" 42"
7C	Alluvial Avenue	Dry Creek to Basin	15' 170' 525'	18" 42" 72"

Exhibit "B"

**SCHEDULE OF
MAXIMUM STORAGE AVAILABLE FOR
RECHARGE OF IRRIGATION WATER**

**NOTIFY FMFCD DISTRICT ENGINEER PRIOR TO
ANY RECHARGE FILLING OR BASIN WORK**
(Numbers Refer to Notes on Page 2 of Exhibit "C")

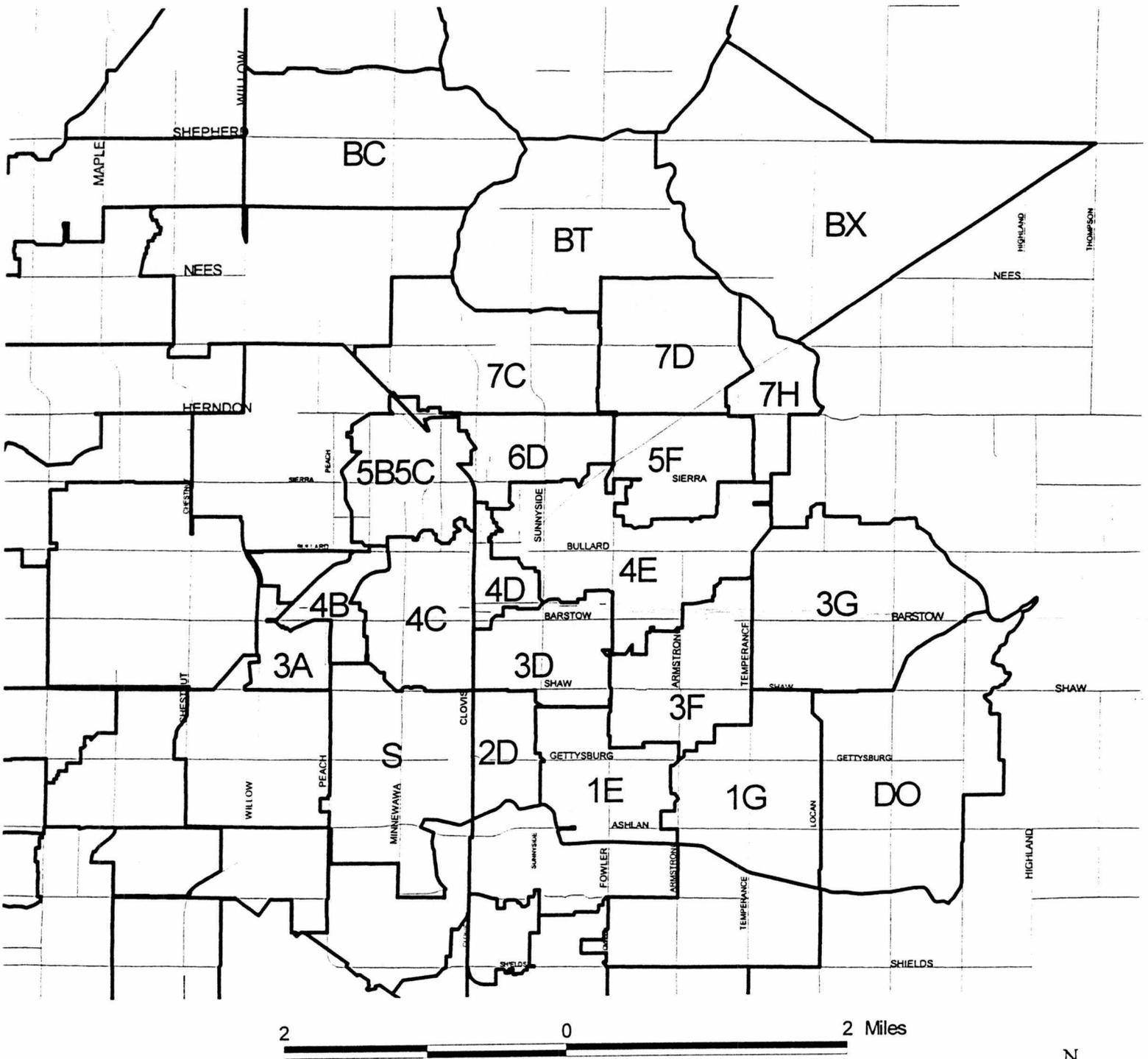
DRAINAGE AREA	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
S			6	4	4	4	4	4	6	6		
BT			7	7	7	7	7	7	7	7		
2D			6	5	4	4	4	4	6	6		
3A			6	2	2	2	2	2	6			
3D			6	2	2	2	2	2	6			
3F			6	2	2	2	2	2	6			
4E			6	2	2	2	2	2	6	6		
5B/5C			6	2	2	2	2	2	6			
5F			6	5	4	4	4	4	6			
6D			6	5	4	4	4	4	6			
7C			6	2	2	2	2	2	6	6		
7D			7	7	7	7	7	7	7	7		
BC			7	7	7	7	7	7	7	7		
1G			6	4	4	4	4	4	4	6		
3G			7	7	7	7	7	7	7	7		

**SCHEDULE OF
MAXIMUM EXCESS STORAGE AVAILABLE FOR
RECHARGE OF IRRIGATION WATER IN C.F.S.**

**NOTIFY FMFCD DISTRICT ENGINEER PRIOR TO
ANY RECHARGE FILLING OR BASIN WORK**

NOTES:

1. **Basin serviced by automatic pump system.** Quantity of recharge filling to be regulated such that water surface in basin remains 10' below lowest point of ground surface at basin.
2. **Basin still under construction.** Quantity of recharge filled to be regulated such that water surface in basin remains 5' below lowest point of ground surface of basin.
3. **Basins are interconnected** with gravity pipeline. May be operated separately or in combination. Notify District of planned operation procedure prior to recharge filling.
4. **Basin completed for recharge purposes.** Quantity of recharge filling to be regulated such that water surface in basin remains 5' below lowest point of ground surface at basin.
5. **Basin completed for recharge purposes.** Quantity of recharge filing to be regulated such that water surface in basin remains 10' below lowest point of ground surface at basin.
6. **Recharge filling** may proceed at a rate no greater than 50% of the April - August rate.
7. **Basin purchased but with limited or no development.** Quantity of recharge limited to capacity created by excavation projects.
8. **Recreation basin with recharge limited to lower floor area.**



CITY OF CLOVIS

STORM DRAINAGE MASTER PLAN

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT