STATE OF CALIFORNIA
THE RESOURCES AGENCY OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY CONTRACT
BETWEEN

THE STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

AND

SANTA CLARA VALLEY WATER DISTRICT

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(Incorporates through Amendment No. 23, executed May 28, 2003)
(No other amendments through 2015)

EXPLANATORY NOTES

< >	This symbol encloses material not contained in the original or amended contract, but added to assist the reader.
Exhibits	Materials that explain or provide detailed information regarding a contract provision.
Attachments	Materials that implement provisions of the basic contract when certain conditions are met.
Amendments	Amendments have been incorporated into this consolidated contract and are indicated by footnote.
District Name	This Water Supply Contract used the term "District" in the original contract for this contractor. Some amendments did not keep the same nomenclature, and instead used the term "Agency". This consolidated contract uses the term "District" to be consistent with the original contract. It does not change the content meaning.
Department Name	This Water Supply Contract used the term "State" in the original contract for this contractor. Some amendments did not keep the same nomenclature, and instead used the term "DWR". This consolidated contract keeps the term "State" throughout to be consistent with the original contract. The content meaning is unchanged.

Contents

EXPLANATORY NOTES ii
A. INTRODUCTORY PROVISIONS 2
1. Definitions 2
(a) "Bond Act" 2
(b) "System" 2
(c) "Delta" 2
(d) "Contractor" 2
(e) "Project facilities" 2
(f) "Project conservation facilities" 2
(g) "Initial project conservation facilities" 2
(h) "Additional project conservation facilities" 3
(i) "Project transportation facilities" 5
(j) "Project water" 5
(k) "Bureau – State Contract" 5
(l) "Bureau water" 5
(m) "Bureau agricultural water" 5
(n) "Bureau municipal, industrial and domestic water" 5
(o) Minimum Project Yield 6
(p) Annual Table A Amount 6
(q) "Maximum Annual Table A Amount" 6
(r) "Supplemental conservation facilities" 6
(s) "Supplemental water" 7
(t) "Year" 7
(u) "Bureau water year" 7
(v) "Year of initial project water delivery" 7
(w) "Project interest rate" 7
(x) "Capital costs" 8
(y) "Project repayment period" 8
(z) "Municipal use" 8
(aa) "Manufacturing use" 8
(bb) "Agricultural use" 8
(cc) "Subject to approval by the State" 8
(cc) "Water system revenue bonds" 8

(dd) "Area of origin statutes" 8
<(ee) No Such Subarticle Exists.> 8
<(ff) No Such Subarticle Exists.> 9
(gg) "East Branch Enlargement Facilities" 9
(hh) "Water System Facilities" 9
(ii) "Carry-over Entitlement Water" 10
(jj) "Interruptible water" 10
(kk) "Nonproject water" 10
(ll) "Monterey Amendments" 10
2. Term of Contract. 10
3. Validation. 10
4. Option for Continued Service. 11
5. Pledge of Revenues. 11
B. WATER SERVICE PROVISIONS 11
6. Annual Entitlements; Interim Service of Bureau Water. 11
(a) <Year of Initial Water Delivery> 11
(b) <Bureau Water> 12
(c) District's Annual Table A Amounts 13
(d) <Obligation of State to Complete Facilities> 13
7. Change in Annual Entitlements; Maximum Annual Entitlement. 15
(a) Changes in Annual Entitlements. 15
(b) <Maximum Annual Entitlement of District> 15
(c) <Adjustment of Annual Entitlements> 15
(d) <Adjustment During Year of Above-Average Local Water Supply> 15
(e) <Payment During Year of Above-Average Local Water Supply> 15
(f) <Deficient Year after Adjustment Year> 16
8. Option to Increase Maximum Annual Entitlement 16
(a) <South Bay Aqueduct Entitlements> 16
(b) <Project Entitlements> 16
(c) <District Payment for Increased Project Entitlement> 17
9. Obligation to Deliver Water Made Available. 17
10. Delivery Structures. 17
(a) <Determination of Size and Location of Delivery Structures> 17
(b) <District Requests for Initial Delivery Structures> 17
(c) <Requests by District for Additional Delivery Structures> 17
(d) <District to Advance Funds for Additional Delivery Structures> 17

11. Measurement of Water Delivered. 18
(a) <Measurement by State> 18
(b) <District to Advance Funds for Measuring Devices> 18
12. Priorities, Amounts, Times, and Rates of Delivery. 18
(a) <Procedure for Determining Water Delivery Schedule> 18
(b) <Limit on Peak Deliveries of Water> 18
(c) <Limit on Rate of Delivery to District> 19
<(d) Delivery of Water Not Delivered in Accordance With Schedule - Deleted> 19
(e) Delivery of Carry-over Entitlement Water 19
(f) Priorities 20
13. Responsibilities for Delivery and Distribution of Water. 20
(a) <State Not Liable for Operation Beyond Delivery Structures> 20
(b) <District Not Liable for Operation Upstream From Delivery Structures> 21
14. Curtailment of Delivery. 21
(a) State May Curtail Deliveries 21
(b) District May Receive Later Delivery of Water Not Delivered 21
15. Use of Water. 21
(a) <State Approval of Sale of Water by District Outside Boundaries> 21
(b) <State Approval of Organization of District> 21
(c) <Change in District Boundaries> 22
(d) <No Other Project Contract within District Boundary> 22
The State shall make no other contract to supply water for use within the District's boundaries without the consent of the Board of Supervisors of the District. 22
16. Continuity and Dependability of Water Supply. 22
(a) Limit on Total of all Maximum Annual Table A Amounts 22
(b) <State to Perfect Water Rights> 22
(c) <State to Report on Ability to Meet Future Water Demands> 22
(d) <Construction of Additional and Supplemental Conservation Facilities> 23
(e) <Furnishing of Supplemental Water> 23
17. Construction of Project Facilities. 23
(a) <Determination of Aqueduct Capacities> 23
(b) <Criteria for Determining Capacity of Transportation Facilities> 23
(c) <Inspection of Project Plans and Specifications> 24
(d) <Restriction on Bond Sales> 24
(e) <Failure to Complete Facilities> 24
(f) <Minimum Reach Capacity> 25
(g) Adjustments Due to Supplemental Financing Costs 25

18. Shortage in Water Supply. 26
(a) Shortages; Delivery Priorities 26
<(b) Permanent Shortage; Reduction of Entitlements - Deleted>....26
(c) Permanent Shortage; Contracts for Areas-of-Origin 26
(d) Reinstatement of Entitlements 27
(e) Advance Notice of Delivery Reductions 27
(f) No Liability for Shortages 27
19. Water Quality. 28
(a) <Water Quality Objectives> 28
(b) <Records of Water Quality> 28
(c) <No Liability for Failure to Meet Quality Objectives> 28
(d) <Bureau Water> 28
20. Suspension of Service 29
21. Interruptible Water Service 29
(a) Allocation of Interruptible Water 29
(b) Rates 29
(c) Contracts 30
C. PAYMENT PROVISIONS 30
21.5. Bureau Water Charge. 30
(a) <Annual Charge> 30
(b) <Refusal of Water Does Not Affect Obligation> 31
(c) <District Water Measurements> 31
(d) <District Obligation for Payments> 31
22. Delta Water Charge. 31
(a) <Payment of Reimbursable Costs of Project Conservation Facilities> 31
(b) <Delta Water Rate Until 1970; Components of Rate Thereafter> 31
(c) <Computation of the Components of the Delta Water Rate> 32
(e) <Allocations to Project Purposes> 33
(f) <Yearly Recomputation of Rates After 1970> 34
(g) <Supplemental Conservation Facilities> 34
(h) <Payments for Annual Entitlement Adjustments> 35
(i) <Local Project as Additional Conservation Facility> 36
(j) <Project Water Purchased by State> 36
(j) <Recovery of Water System Revenue Bond Financing Costs> 36
23. Transportation Charge. 37
24. Transportation Charge - Capital Cost Component. 38

(a) <Method of Computation> 38
(b) <Allocation of Capital Costs Among Contractors> 38
(c) <Annual Payments of Allocated Capital Costs> 40
(d) <Payment in Advance for Excess Peaking Capacity> 40
(e) <Costs Incurred Prior to Date of Contract> 41
(f) <Off-Aqueduct Power Facilities> 41
(g) <Recovery of Water System Revenue Bond Financing Costs> 41
25. Transportation Charge - Minimum Operation, Maintenance, Power, and Replacement Component. 41
(a) <Method of Computation> 41
(b) <Allocation of Costs> 41
(c) <Payment Table> 42
(d) <Off-Aqueduct Power Facilities> 42
(e) <No Subtitle> 43
26. Transportation Charge - Variable Operation, Maintenance, Power, and Replacement Component. 43
(a) <Method of Computation> 43
(b) <Revenue from Aqueduct Power Recovery Plants> 44
(c) <Payment Table> 44
27. Transportation Charge - Payment Schedule. 44
28. Transportation Charge - Redetermination. 45
(a) Determinative Factors Subject to Retroactive Charge 45
(b) Adjustment: Transportation Charge - Capital Cost Component 45
(c) Adjustment: Transportation Charge - Minimum and Variable Components 46
(d) Exercise of Option 46
(e) <No Subtitle> 46
(f) Adjustment: Water System Revenue Bond Financing Costs 47
29. Time and Method of Payment. 47
(a) <Bureau Water Charge> 47
(b) <Initial Payment - Delta Water Charge> 47
(c) <Initial Payment - Transportation Charge: Capital Component> 47
(d) <Initial Payment - Transportation Charge: Minimum Component> 47
(f) <Statement of Charges> 47
(g) <Timing of Payment – Bureau Water Charge> 48
(h) <Timing of Payment - Capital Components> 48
(i) <Timing of Payment - Minimum Components> 48
(j) <Timing of Payment - Variable Components> 48

(k) <Contest of Accuracy of Charges> 49
<30. Surcharge for Project Water Used on Excess Land - Deleted> 49
31. Adjustment for Overpayment or Underpayment....49
32. Delinquency in Payment....49
(a) <District to Provide for Punctual Payment> 49
(b) <Interest on Overdue Payments>....49
33. Obligation of District to Make Payments.....49
(a) <Refusal of Water Does Not Affect Obligation> 49
(b) <Character of Obligation>....49
34. Obligation of District to Levy Taxes and Assessments. 50
(a) <When Obligated>....50
(b) <Enforcement by Officers of District> 50
(c) <Deposit in Separate Fund> 50
(d) <Enforcement of Levy>....50
D. GENERAL PROVISIONS....50
35. Remedies Not Exclusive....50
36. Amendments. 50
37. Reservation With Respect to State Laws. 51
38. Opinions and Determinations. 51
39. Contracting Officer of the State. 51
40. Successors and Assigns Obligated. 51
41. Assignment. 51
42. Waiver of Rights....51
43. Notices....51
44. Maintenance and Inspection of Books, Records, and Reports. 51
(a) <Rights by District and State>....51
(b) <District Reports for Bureau Water>....52
45. <Contracts to be Uniform>....52
(a) <South Bay Aqueduct Contracts>....52
(b) <Project Contracts> 52
46. Suit on Contract. 52
47. Amendatory Provisions. 52
<(a) Surplus Water – Deleted> 52
<(b) Surcharge Credit – Deleted>....52
(c) Turnouts and Measuring Devices 52
(d) Del Valle Branch Capacity 53

<48. No such Article exists.> 53
<49. No such Articlexists.> 53
50. Water System Revenue Bond Financing Costs. 53
(a) <Cost Provisions> 53
(b) <Annual Charges> 53
(c) <District Invoice> 54
(d) Timing of Payments. 54
(e) Reduction in Charges. 54
(f) <Default Protection> 54
(g) <Bond Issuing Process> 54
(h) Defaults. 54
(i) Power of Termination. 56
(j) <Payments Unaffected by Article 51> 57
51. FINANCIAL ADJUSTMENTS 57
(a) General Operating Account 57
(b) State Water Facilities Capital Account 57
(c) Calculation of Financial Needs 58
(d) Apportionment of Reductions between Agricultural and Urban Contractors 59
(e) Review of Financial Requirements 61
(f) Apportionment of Reductions among Urban Contractors 62
(g) Apportionment of Reductions Among Agricultural Contractors 63
(h) Agricultural Rate Management Trust Fund 64
(i) Definitions. 66
(j) <No Subtitle> 66
52. KERN WATER BANK 67
(a) <No Subtitle> 67
(b) <No Subtitle> 67
53. PERMANENT TRANSFERS AND REDUCTIONS OF ENTITLEMENT 67
(a) <No Subtitle> 67
(b) <No Subtitle> 67
(c) <No Subtitle> 68
(d) <No Subtitle> 68
(e) <No Subtitle> 69
(f) <No Subtitle> 69
(g) <No Subtitle> 70
(h) <No Subtitle> 70

(i) <No Subtitle>....70
54. Usage of Lakes Castaic and Perris....71
(a) <No Subtitle>....71
(b) <No Subtitle>....72
(c) <No Subtitle>....72
(d) <No Subtitle>....73
(e) <No Subtitle>....74
(f) <No Subtitle>....74
(g) <No Subtitle>....74
55. Transportation of Nonproject Water....74
(a) <No Subtitle>....74
(b) <No Subtitle>....74
(c) <No Subtitle>....75
56. Use, Storage, and Sale of Project Water Outside of Service Area and Storage of Water in Project Surface Conservation Facilities....75
(a) State Consent to Use of Project Water Outside of Service Area....75
(b) Groundwater Storage Programs....75
(c) Storage of Project Water Outside of Service Area....75
(d) Sale of Project Water For Use Outside Service Area....78
(e) Continuance of Article 12(e) Carry-over Provisions....79
(f) Bona Fide Exchanges Permitted....79
(g) Other Transfers....80
ATTACHMENT 1....82

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

CONTRACT
BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND SANTA CLARA VALLEY WATER DISTRICT FOR A WATER SUPPLY

THIS CONTRACT, made this 20th day of November, 1961, and as amended through May 28, 2003, pursuant to the provisions of the California Water Resources Development Bond Act, the State Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, herein referred to as the "State", and Santa Clara County Flood Control and Water Conservation District, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof with its principal place of business in San Jose, California, herein referred to as the "District",

WITNESSETH, That:

WHEREAS, the State is authorized to construct and operate facilities for the storage and conveyance of water, certain of which facilities will make water available to the District; and

WHEREAS, funds will be provided under the California Water Resources Development Bond Act for the construction of said facilities; and

WHEREAS, the District is desirous of obtaining a supply of water from the State;

NOW THEREFORE, it is mutually agreed as follows:

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A. INTRODUCTORY PROVISIONS

1. Definitions. When used in this contract, the following terms shall have the meanings hereinafter set forth:

(a) **"Bond Act"** shall mean the California Water Resources Development Bond Act, comprising Chapter 8, commencing at Section 12930, of Part 6 of Division 6 of the Water Code, as enacted in Chapter 1762 of the Statutes of 1959.

(b) **"System"** shall mean the State Water Resources Development System as defined in Section 12931 of the Water Code.

(c) **"Delta"** shall mean the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code on November 8, 1960.

(d)[1] **"Contractor"** shall mean any entity that has executed, or is an assignee of, a contract of the type published in Department of Water Resources Bulletin No. 141 dated November 1965, with the State for a dependable supply of water made available by the System, except such water as is made available by the facilities specified in Section 12934(d)(6) of the Water Code.

(e)[2] **"Project facilities"** shall mean those facilities of the system which will, in whole or in part, serve the purposes of this contract by conserving water and making it available for use in and above the Delta and for export from the Delta and from such additional facilities as are defined in Article 1(h)(2) herein, and by conveying water to the District. Said project facilities shall consist specifically of "project conservation facilities" and "project transportation facilities", as hereinafter defined.

(f) **"Project conservation facilities"** shall mean such project facilities as are presently included, or as may be added in the future, under (g) and (h) below.

(g) **"Initial project conservation facilities"** shall mean the following project facilities specified in Section 12934(d) of the Water Code:

(1) All those facilities specified in subparagraph (1) thereof.

(2) Those facilities specified in subparagraph (3) thereof to the extent that they serve the purposes of water conservation in the Delta, water supply in the Delta, and transfer of water across the Delta.

(3) A reservoir near Los Banos in Merced County as specified in subparagraph (2) thereof.

(4) The reach of the San Joaquin Valley-Southern California Aqueduct extending from the Delta to a reservoir near Los Banos in Merced County, to the extent required for water conservation through conveyance of water diverted from the Delta to offstream storage in said reservoir as

1 Amended: Amendment No. 22
2 Amended: Amendment No 18

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determined by the State.

(5) Those facilities specified in subparagraph (5) thereof which are incidental to the facilities included under (1), (2), (3), and (4) above.

(6) Those facilities specified in subparagraph (7) thereof which are necessary and appurtenant to the facilities included under (1), (2), (3), (4), and (5) above.

(h)[3] **<u>"Additional project conservation facilities"</u>** shall mean the following facilities and programs which will serve the purpose of preventing any reduction in the minimum project yield as hereinafter defined:

(1) Those project facilities specified in Section 12938 of the Water Code;

(2) Those facilities and programs described in (A), (B), (C), (D), and (E) below which, in the State's determination, are engineeringly feasible and capable of producing project water which is economically competitive with alternative new water supply sources, provided that, in the State's determination, the construction and operation of such facilities and programs will not interfere with the requested deliveries of annual entitlement to any contractor other than the sponsoring contractor, and will not result in any greater annual charges to any contractor other than the sponsoring contractor than would have occurred with the construction at the same time of alternative new water supply sources which are either reservoirs located north of the Delta or off-Aqueduct storage reservoirs located south or west of the Delta designed to supply water to the California Aqueduct. The following facilities and programs shall hereinafter be referred to as "Local Projects":

(A) On-stream and off-stream surface storage reservoirs not provided for in Section 12938 of the Water Code, that will produce project water for the System for a period of time agreed to by the sponsoring contractor;

(B) Ground water storage facilities that will produce project water for the System for a period of time agreed to by the sponsoring contractor;

(C) Waste water reclamation facilities that will produce project water for the System for a period of time agreed to by the sponsoring contractor;

(D) Water and facilities for delivering water purchased by the State for the System for a period of time agreed to by the sponsoring contractor; provided that the economic test specified herein shall be applied to the cost of these facilities together with the cost of the purchased water; and

(E) Future water conservation programs and facilities that will reduce demands by the sponsoring contractor for project water from the System for a period of time agreed to by the sponsoring contractor and will thereby have the effect of increasing project water available in the Delta for distribution.

3 Amended: Amendment No. 18

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(3) Whether a Local Project described in (2) above shall be considered economically competitive shall be determined by the State by comparing, in an engineering and economic analysis, such Local Project with alternative new water supply sources which are either reservoirs located north of the Delta or off-Aqueduct storage reservoirs located south or west of the Delta designed to supply water to the California Aqueduct. The analysis for such alternative new water supply sources shall use the average cost per acre-foot of yield in the latest studies made for such sources by the State and shall compare those facilities with the proposed Local Project using commonly accepted engineering economics. In the case of a Local Project to be funded in part by the State as part of the System and in part from other sources, the economic analysis specified herein shall be applied only to the portion to be funded by the State as part of the System.

(4) The Local Projects in (2) above shall not be constructed or implemented unless or until:

(A) The sponsoring contractor signs a written agreement with the State which:

(i) Contains the sponsoring contractor's approval of such facility or program.

(ii) Specifies the yield and the period of time during which the water from the Local Project shall constitute project water; and

(iii) Specifies the disposition of such Local Project or of the yield from such Local Project upon the expiration of such period of time; and

(B) All contractors within whose boundaries any portion of such Local Project is located, and who are not sponsoring contractors for such Local Project give their written approval of such Local Project.

(5) "Sponsoring contractor" as used in this Article 1(h) shall mean the contractor or contractors who either will receive the yield from facilities described in 2(A), (B), (C), or (D) above, or agree to reduce demands for project water from the System pursuant to 2(E) above.

(6) In the event of a shortage in water supply within the meaning of Article 18(a), the determination of whether to count, in whole or in part, the yield from facilities described in 2(A), (B), (C), or (D) above, or the reduced demand from future conservation programs described in 2(E) above in the allocation of deficiencies among contractors will be based on a project-by-project evaluation taking into consideration such factors as any limitation on the use of the water from such facilities and whether the sponsoring contractor has access to project water from the Delta as an alternate to such facilities.

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(i)[4] **<u>"Project transportation facilities"</u>** shall mean the following project facilities:

(1) The following facilities specified in subparagraph (2) of Section 12934(d) of the Water Code: The reach of the San Joaquin Valley-Southern California Aqueduct extending from the Delta to a South Bay Pumping Plant, to the extent required for water transportation as determined by the State, and a South Bay Aqueduct extending to terminal reservoirs in the Counties of Alameda and Santa Clara, but not including any portion of Del Valle Reservoir which may be allocated to conservation of water from Arroyo Del Valle Watershed.

(2) Facilities for the generation and transmission of electrical energy of the following types:

(A) Hydroelectric generating and transmission facilities, whose operation is dependent on the transportation of project water, or on releases to channels downstream of project facilities defined under (1) above. Such facilities shall be called "project aqueduct power recovery plants."

(B) All other generating and associated transmission facilities, except those dependent on water from project conservation facilities, for the generation of power. These facilities shall be called "off-aqueduct power facilities" and shall consist of the State's interest in the Reid-Gardner and any other generating and associated transmission facilities, constructed or financed in whole or in part by the State, which are economically competitive with alternative power supply sources as determined by the State.

(3) Those facilities specified in subparagraph (7) of Section 12934(d) of the Water Code which are necessary and appurtenant to the facilities included under (1) and (2) above.

(j) **<u>"Project water"</u>** shall mean water made available for delivery to the contractors by the project conservation facilities and by the transportation facilities included in the System.

(k) **<u>"Bureau – State Contract"</u>** shall mean any contract or contracts between the United States and the State providing for delivery of water by the Bureau of Reclamation into project transportation facilities for subsequent delivery to contractors.

(l) **<u>"Bureau water"</u>** shall mean water purchased by the State from the United States Bureau of Reclamation under the Bureau - State contract, and made available for delivery to the contractors by the transportation facilities included in the System.

(m) **<u>"Bureau agricultural water"</u>** shall mean Bureau water used primarily in the commercial production of plant crops or livestock.

(n) **<u>"Bureau municipal, industrial and domestic water"</u>** shall mean Bureau water other than Bureau agricultural water.

4 Amended: Amendment No. 18

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(o)[5] <u>Minimum Project Yield</u>

"Minimum project yield" shall mean the dependable annual supply of project water to be made available assuming completion of the initial project conservation facilities and additional project conservation facilities. The project's capability of providing the minimum project yield shall be determined by the State on the basis of coordinated operations studies of initial project conservation facilities and additional project conservation facilities, which studies shall be based upon factors including but not limited to: (1) the estimated relative proportion of deliveries for agricultural use to deliveries for municipal use assuming Maximum Annual Table A Amounts for all contractors and the characteristic distributions of demands for these two uses throughout the year; and (2) agreements now in effect or as hereafter amended or supplemented between the State and the United States and others regarding the division of utilization of waters of the Delta or streams tributary thereto.

(p)[6] Annual Table A Amount

"Annual Table A Amount" shall mean the amount of project water set forth in Table A of this contract that the State, pursuant to the obligations of this contract and applicable law, makes available for delivery to the District at the delivery structures provided for the District. The term Annual Table A Amount shall not be interpreted to mean that in each year the State will be able to make that quantity of project water available to the District. The Annual Table A Amounts and the terms of this contract reflect an expectation that under certain conditions the District will receive its full Annual Table A Amount; but that under other conditions only a lesser amount, allocated in accordance with this contract, may be made available to the District. This recognition that full Annual Table A Amounts will not be deliverable under all conditions does not change the obligations of the State under this contract, including but not limited to, the obligations to make all reasonable efforts to complete the project facilities, to perfect and protect water rights, and to allocate among contractors the supply available in any year, as set forth in Articles 6(c), 6(d), 16(b) and 18, in the manner and subject to the terms and conditions of those articles and this contract. Where the term "annual entitlement" appears elsewhere in this contract, it shall mean "Annual Table A Amount." The State agrees that in future amendments to this and other contractor's contracts, in lieu of the term "annual entitlement," the term "Annual Table A Amount" will be used and will have the same meaning as "annual entitlement" wherever that term is used.

(q)[7] <u>"Maximum Annual Table A Amount"</u>

"Maximum annual entitlement" shall mean the maximum annual amounts set forth in Table A of this contract, and where the term "maximum annual entitlement" appears elsewhere in this contract it shall mean "Maximum Annual Table A Amounts."

(r) <u>"Supplemental conservation facilities"</u> shall mean those facilities provided for, in Section 12938 of the Water Code which will serve the purpose of supplying water in addition to the total of the maximum annual entitlements of all contractors, or in addition to the minimum project yield, if greater than said total, and for meeting local needs.

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5 Latest Amendment: No. 23
6 Amended: Amendment No. 23
7 Amended: Amendment No. 23

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(s) **<u>"Supplemental water"</u>** shall mean water made available by supplemental conservation facilities, in excess of the total of the maximum annual entitlements of all contractors, or in excess of the minimum project yield, if greater than said total.

(t) **<u>"Year"</u>** shall mean the 12-month period from January 1 through December 31, both dates inclusive.

(u) **<u>"Bureau water year"</u>** shall mean the 12-month period commencing March 1 of each year.

(v) **<u>"Year of initial project water delivery"</u>** shall mean the year when project water will first be available for delivery to a contractor pursuant to its contract with the State.

(w)[8] **<u>"Project interest rate"</u>** shall mean the weighted average interest rate on bonds, advances, or loans listed in this section to the extent the proceeds of any such bonds, advances, or loans are for construction of the State Water Facilities defined in Section 12934(d) of the Water Code, the additional project conservation facilities, and the supplemental conservation facilities (except off-aqueduct power facilities; water system facilities; advances for delivery structures, measuring devices and excess capacity; and East Branch Enlargement Facilities). The project interest rate shall be calculated as a decimal fraction to five places by dividing (i) the total interest cost required to be paid or credited by the State during the life of the indebtedness or advance by (ii) the total of the products of the various principal amounts and the respective terms in years of all such amounts. The bonds, advances, or loans used in calculating the project interest rate shall be:

(1) General obligation bonds issued by the State under the Bond Act, except that any premium received on the sale of these bonds shall not be included in the calculation of the project interest rate,

(2) Revenue bonds issued by the State under the Central Valley Project Act after May 1, 1969,

(3) Bonds issued by the State under any other authority granted by the Legislature or the voters,

(4) Bonds issued by any agency, district, political subdivision, public corporation, or nonprofit corporation of this State,

(5) Funds advanced by any contractor without the actual incurring of bonded debt therefor, for which the net interest cost and terms shall be those which would have resulted if the contractor had sold bonds for the purpose of funding the advance, as determined by the State,

(6) Funds borrowed from the General Fund or other funds in the Treasury of the State of California, for which the total interest cost shall be computed at the interest rate earned over the period of such borrowing by moneys in the Surplus Money Investment Fund of such Treasury invested in securities, and

(7) Any other financing capability available in the Treasury of the State of California at whatever interest rate and other financing costs are provided in the law

8 Amended: Amendments No. 6, 18, and 19

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authorizing such borrowing. However, the use of other financing from the State Treasury is intended to involve only short term borrowing at interest rates and other financing costs no greater than those charged to other State agencies during the same period until such time as the Department can sell bonds and reimburse the source of the short term borrowing from the proceeds of the bond sale.

(x) **"Capital costs"** shall mean all costs incurred subsequent to authorization of a facility for construction by the Legislature or by administrative action pursuant to Section 11290 of the Water Code and to the Bond Act, including those so incurred prior to the beginning of the project repayment period as herein defined and any accrued unpaid interest charges thereon at the rates specified herein, which are properly chargeable to the construction of and the furnishing of equipment for the facilities of the System, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisition of lands, easements and rights-of-way, relocation work, and essential administrative work in connection therewith, all as shown upon the official records of the Department of Water Resources.

(y)[9] **"Project repayment period"** shall mean that period of years commencing on January 1, 1961, and extending until December 31, 2035; *Provided*, that whenever construction of any project facilities is financed by a bond issue with maturity dates later than December 31, 2035, whether the bonds are issued pursuant to the Bond Act or other authority, repayment of the costs of such facilities shall be extended to end on the date of the latest maturities of the bonds with which construction of such facilities are financed.

(z) **"Municipal use"** shall mean all those uses of water common to the municipal water supply of a city, town, or other similar population group, including uses for domestic purposes, uses for the purposes of commerce, trade or industry, and any other use incidental thereto for any beneficial purpose.

(aa) **"Manufacturing use"** shall mean any use of water primarily in the production of finished goods for market.

(bb) **"Agricultural use"** shall mean any use of water primarily in the production of plant crops or livestock for market, including any use incidental thereto for domestic or stock-watering purposes.

(cc) **"Subject to approval by the State"** shall mean subject to the determination and judgment of the State as to acceptability. <This text appears in the original contract.>

(cc)[10] **"Water system revenue bonds"** shall mean revenue bonds or revenue bond anticipation notes issued by the State under the Central Valley Project Act after January 1, 1987 for water system facilities identified in Article 1(hh). <This second Article 1(cc) was added by Amendment No. 15 and is retained here..>

(dd) **"Area of origin statutes"** shall mean Section 10505 and Sections 11460 through 11463 of the Water Code as now existing or hereafter amended.

<(ee) No Such Subarticle Exists.>

9 Amended: Amendment No. 16
10 Amended: Amendment No. 19

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<(ff) No Such Subarticle Exists.>

(gg)[11] **<u>"East Branch Enlargement Facilities"</u>** shall mean all of the following:

(1) The facilities remaining to be constructed as part of the East Branch Enlargement construction;

(2) The work done pursuant to the letter agreement between the State and The Metropolitan Water District of Southern California dated November 29, 1966, which consisted of constructing the California Aqueduct between Cottonwood (now known as Alamo) Powerplant and Cedar Springs (now known as Silverwood) Reservoir so that, by future additions to the canal lining, siphons, and additional pumping units at Pearblossom Pumping Plant, the capacity could be increased by a then-estimated approximately 700 cubic feet per second;

(3) That portion of the enlargement of the Pearblossom Pumping Plant Forebay and Cofferdam construction which would not have been constructed but for the proposed East Branch Enlargement and which was done pursuant to the letter agreement between the State and The Metropolitan Water District of Southern California, dated January 19, 1984;

(4) That portion of the canal lining work between Alamo Powerplant and Pearblossom Pumping Plant done pursuant to the letter agreements between the State and The Metropolitan Water District of Southern California, dated July 2, 1984, and May 15, 1985, which increased the East Branch Aqueduct capacity beyond that set forth in Table B-2 as shown in State Bulletin 132-70;

(5) That portion of Reach 24 (Silverwood Lake) to be determined by reallocation of Reach 24 to reflect the additional use to be made of that reach as a result of the East Branch Enlargement operation; and

(6) That portion of Reach 25 (San Bernardino Tunnel) to be determined by an allocation of total delivery capacity of Reach 25 between the basic East Branch facilities and the East Branch Enlargement as a result of East Branch Enlargement operation.

(hh)[12] **<u>"Water System Facilities"</u>** shall mean the following facilities to the extent that they are financed with water system revenue bonds or to the extent that other financing of such facilities is reimbursed with proceeds from water system revenue bonds:

(1) The North Bay Aqueduct,

(2) The Coastal Branch Aqueduct,

(3) Delta Facilities, including Suisun Marsh facilities, to serve the purposes of water conservation in the Delta, water supply in the Delta, transfer of water across the Delta, and mitigation of the environmental effects of project facilities, and to the extent presently authorized as project purposes, recreation and fish and wildlife enhancement,

11 Amended: Amendment No. 19
12 Amended: Amendments No. 19 and 22

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(4) Local projects as defined in Article 1(h)(2) designed to develop no more than 25,000 acre-feet of project yield from each project,

(5) Land acquisition prior to December 31, 1995, for the Kern Fan Element of the Kern Water Bank,

(6) Additional pumps at the Banks Delta Pumping Plant,

(7) The transmission line from Midway to Wheeler Ridge Pumping Plant,

(8) Repairs, additions, and betterments to conservation or transportation facilities existing as of January 1, 1987, and to all other facilities described in this subarticle (hh) except for item (5),

(9) A project facilities corporation yard, and

(10) A project facilities operation center.

(ii)[13] **"Carry-over Entitlement Water"** shall mean water from a contractor's annual entitlement for a respective year which is made available for delivery by the State in the next year pursuant to Article 12(e).

(jj)[14] **"Interruptible water"** shall mean project water available as determined by the State that is not needed for fulfilling contractors' annual entitlement deliveries as set forth in their water delivery schedules furnished pursuant to Article 12 or for meeting project operational requirements, including storage goals for the current or following years.

(kk)[15] **"Nonproject water"** shall mean water made available for delivery to contractors that is not project water as defined in Article 1(j).

(ll)[16] **"Monterey Amendments"** shall mean this amendment and substantially similar amendments to other contractors' water supply contracts that include, among other provisions, the addition of Articles 51 through 56.

2.[17] **Term of Contract.** This contract shall become effective on the date first above written and shall remain in effect for the longest of the following:

1. The project repayment period
2. 75 years
3. The period ending with the latest maturity date of any bond issue used to finance the construction costs of project facilities.

3. Validation. Within one (1) year after the effective date of this contract, the District shall submit this contract to a court of competent jurisdiction for determination of its validity by a proceeding in mandamus or other appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment. In the event that this contract is determined to be invalid by such final decree or judgment, the State shall make all reasonable

13 Amendment No. 20
14 Amendment No. 22
15 Amendment No. 22
16 Amendment No. 22
17 Amendment No. 16

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efforts to obtain validating legislation at the next session of the Legislature empowered to consider such legislation, and within six (6) months after the close of such session, if such legislation shall have been enacted, the District shall submit this contract to a court of competent jurisdiction for redetermination of its validity by appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment.

4.[18] **Option for Continued Service.** By written notice to the State at least six (6) months prior to the expiration of the term of this contract, the District may elect to receive continued service after expiration of said term under the following conditions unless otherwise agreed to:

(1) Service of water in annual amounts up to and including the District's maximum annual entitlement hereunder.

(2) Service of water at no greater cost to the District than would have been the case had this contract continued in effect.

(3) Service of water under the same physical conditions of service, including time, place, amount and rate of delivery, as are provided for hereunder.

(4) Retention of the same chemical quality objective provision as is set forth herein.

(5) Retention of the same options to utilize the project transportation facilities as are provided for in Articles 18(c) and 55, to the extent such options are then applicable.

Other terms and conditions of the continued service shall be reasonable and equitable and shall be mutually agreed upon. In the event that said terms and conditions provide for continued service for a limited number of years only, the District shall have the same option to receive continued service here provided for upon the expiration of that and each succeeding period of continued service.

5. **Pledge of Revenues.** This contract is entered into for the direct benefit of the holders and owners of all general obligation bonds issued under the Bond Act, and the income and revenues derived from this contract are pledged to the purposes and in the priority set forth in that act.

B. WATER SERVICE PROVISIONS

6.[19] **Annual Entitlements; Interim Service of Bureau Water.**

(a) **<Year of Initial Water Delivery>** The year of initial Bureau water delivery to the District is presently estimated to be 1965. The year of initial project water delivery is presently estimated to be 1967. To the extent practicable, the State shall notify the District of any change in this estimate.

18 Amended: Amendment 22
19 Amended: Amendment No. 1

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(b) **<Bureau Water>** Each year prior to the year of initial project water delivery to the District and commencing in 1965, which year shall correspond to year "1" in Table A, included in subdivision (c) of this article, the State, to the extent Bureau water is available to the State, shall make Bureau water available for delivery to the District in the amounts designated in Table A for the respective years of delivery: *Provided*, That such service of Bureau water shall be subject to all applicable terms and conditions of this contract governing the service of project water, unless otherwise specifically provided; to all applicable terms and conditions of the Bureau-State Contract; and to the following special terms and conditions:

(1) In any year in which there may occur for any reason a shortage in the supply of Bureau water available for delivery to those contractors entitled to receive such water under their respective contracts, with the result that such supply is less than the total of the amounts of Bureau water to be made available to such contractors under their respective contracts in that year, the State shall, by amendment of Table A in the respective contract, reduce the amount of water to be made available for delivery to each such contractor under its contract in that year in an amount which bears the same proportion to the amount of the shortage in said Bureau water supply that the amount of Bureau water otherwise to be made available for delivery to the contractor under its contract in that year bears to the total of the amounts of Bureau water otherwise to be made available for delivery to all such contractors under their respective contracts in that year, all as determined by the State: *Provided*, That the State may apportion the available supply of Bureau water on some other basis if such is required to meet minimum demands for domestic supply, fire protection, or sanitation during the year.

(2) Bureau agricultural water delivered to the District pursuant to this contract shall not be furnished by the District to any excess land as hereinafter defined. As used in this subdivision (b) of Article 6, but not as used in Article 30, the term "excess land" shall mean that part of the irrigable land within the district in excess of one hundred-sixty (160) acres held in the beneficial private ownership of any one person and the term "nonexcess land" means all irrigable land which is not excess land. As a condition precedent to the right to receive water made available pursuant to this contract each owner of excess land shall be required to select his nonexcess land and to file in the office of the district and with the State, in duplicate, one copy thereof to be furnished by the State to the United States, his written designation and description thereof. Upon the failure of the landowner to do so the State shall make such designation and mail a notice thereof to such landowner. In the event the State fails to act within a reasonable period of time, such designation may be made by the United States by notice to the State and the landowner. The landowner shall then be bound by such designation and the district shall furnish water provided under this contract only to the designated nonexcess land. A landowner may, with the consent of the United States, change the designation provided that an equal acreage of land previously designated as nonexcess shall become excess.

(3) Service of Bureau water to the District shall extend into the year of initial project water delivery to the District for any portion thereof in which project water is not available for delivery to the District: *Provided*, That an appropriate portion of the amount of water designated in Table A for said year shall be determined by the State to

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be Bureau water for the purposes of this contract, in accordance with the District's delivery schedule for that year established pursuant to Article 12.

(c)[20] District's Annual Table A Amounts

Service of Bureau water to the District pursuant to subdivision (b) of this article shall cease in the year preceding the year of initial project water delivery to the District, except as provided in subparagraph (3) of that subdivision. Commencing with the year of initial project water delivery to the District, the State each year shall make project water available for delivery to the District the amounts of project water designated in Table A of this contract for the respective years of delivery: *Provided*, That if the District receives service of Bureau water during the year of initial project water delivery to the District pursuant to subparagraph (3) of subdivision (b) of this article, the amount of project water made available for delivery to the District in said year shall be only that portion of the amount of water designated in Table A for said year which is not determined by the State to be Bureau water pursuant to said subparagraph (3). The amount of water designated in Table A for the year of delivery corresponding to the year of initial project water delivery to the District, less any portion thereof which is determined by the State to be Bureau water pursuant to subparagraph (3) of subdivision (b) of this article, and the amount of water designated in Table A for all succeeding years are referred to in this contract as the District's Annual Table A Amounts and shall be subject to change as provided in Article 7(a).

(d) <Obligation of State to Complete Facilities> Subject to the availability of funds, the State shall make all reasonable efforts consistent with sound fiscal policies, reasonable construction schedules, and proper operating procedures to complete the project facilities necessary for delivery of Bureau water to the District in such manner and at such times that said delivery can commence on or before April 1, 1965, and to complete the project facilities necessary for delivery of project water to the District in such a manner and at such times that said delivery can commence in or before 1967 and can thereafter continue in the amounts designated in Table A.

20 Amended: Amendment No. 23

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TABLE A[21]
ANNUAL AMOUNTS
SANTA CLARA COUNTY VALLEY WATER DISTRICT

	Year	Total Annual Amount In Acre-feet
<1>	1968	88,000
<2>	1969	75,000
<3>	1970	88,000
<4>	1971	88,000
<5>	1972	88,000
<6>	1973	88,000
<7>	1974	88,000
<8>	1975	88,000
<9>	1976	88,000
<10>	1977	88,000
<11>	1978	88,000
<12>	1979	88,000
<13>	1980	88,000
<14>	1981	88,000
<15>	1982	88,000
<16>	1983	88,000
<17>	1984	88,000
<18>	1985	88,000
<19>	1986	88,000
<20>	1987	88,000
<21>	1988	88,000
<22>	1989	90,000
<23>	1990	92,000
<24>	1991	94,000
<25>	1992	96,000
<26>	1993	98,000
<27>	1994	100,000
and each succeeding year thereafter, for the term of this contract:		100,000

[22]In any year, the amounts designated in this Table A shall not be interpreted to mean that the State is able to deliver those amounts in all years. Article 58 describes the State's process for providing current information for project delivery capability.

21 Amended: Amendment No. 4
22 Amended: Amendment No. 23

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7. <u>Change in Annual Entitlements; Maximum Annual Entitlement.</u>

(a)[23] Changes in Annual Entitlements.

The District may, at any time or times during the term of this contract, by timely written notice furnished to the State, request that project water be made available to it thereafter in annual amounts greater or less than the annual entitlements designated in Table A of this contract. Subject to approval by the State of any such request, the State's construction schedule shall be adjusted to the extent necessary to satisfy the request, and the requested increases or decreases in said annual entitlements shall be incorporated in said Table A by amendment thereof. Requests for changes in annual entitlements for more than one year shall be approved by the State: *Provided*, That no change shall be approved if in the judgment of the State it would impair the financial feasibility of project facilities.

(b)[24] <Maximum Annual Entitlement of District> The maximum amount of project water to be made available to the District in any one year under this contract shall be 100,000 acre-feet, referred to in this contract as the District's maximum annual entitlement, and in no event shall such maximum amount of project water to be made available to the District be increased over this amount, except as is provided for in Articles 8 and 15(c).

(c)[25] <Adjustment of Annual Entitlements> Subject to approval by the State and similar rights of other contractors, the District may increase its annual entitlement for any year in which local water supplies available to the District are deficient due to climatic conditions up to the amount of its maximum annual entitlement: *Provided*, That such increase in delivery of water shall not interfere with the delivery of their respective annual entitlements to other contractors.

(d) <Adjustment During Year of Above-Average Local Water Supply> In a year in which the District is unable to accept an amount of project water equal to its annual entitlement for that year because of above-average local water supply available to the District due to climatic conditions which occurs subsequent to a year in which the District has increased its annual entitlement pursuant to subdivision (c) of this article, the District may make a reduction in its annual entitlement which shall not exceed the sum of all prior increases in annual entitlement made under subdivision (c) of this article less the sum of all prior decreases in annual entitlement made under this subdivision.

(e) <Payment During Year of Above-Average Local Water Supply> In the event that, due to conditions of above-average local water supply available to the District because of favorable climatic conditions, the District in any year is unable to accept an amount of project water equal to its annual entitlement for said year as set forth in Table A, included in Article 6(c), the District shall remain obligated to make all payments required under this contract, as set forth in Article 9, including the capital cost component and the minimum operation, maintenance, power and replacement component of the Delta Water Charge: *Provided*, That the District's annual entitlement for said year is not reduced under the provisions of subdivision (d) of this article.

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23 Amended: Amendment No. 22
24 Amended: Amendment No. 1
25 Added: (c)-(f); Amendment No. 1

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(f) **<Deficient Year after Adjustment Year>** In a year in which local water supplies available to the District are deficient because of climatic conditions which occurs subsequent to a year in which deliveries to the District have been decreased under subdivision (e) of this article the District may request and the State shall, consistent with similar rights of other contractors, deliver project water in an amount greater than the annual entitlement set forth for that year in Table A included in Article 6(c) but not to exceed the sum of all prior amounts of project water not delivered to the District, but for which the District has paid the capital cost component and the minimum operation, maintenance, power and replacement component of the Delta Water Charge under subdivision (e) of this article, less the sum of all prior deliveries of project water to the District under the provisions of this subdivision: *Provided*, That the sum of the annual entitlement of the District for that year and the amount of water delivered to the District in excess of its annual entitlement under this subdivision shall not exceed the maximum annual entitlement of the District: *Provided further*, That such increase in delivery of water shall not interfere with the delivery of their respective annual entitlements to other contractors, but shall be paramount to the right of any contractor to receive surplus water.

8. <u>Option to Increase Maximum Annual Entitlement</u>.

(a) **<South Bay Aqueduct Entitlements>** In the event that the maximum annual entitlements to water from the South Bay Aqueduct under all contracts executed by the State on or before November 30, 1961, do not aggregate 210,000 acre-feet per year, the State shall immediately notify all contractors served by the South Bay Aqueduct, and each such contractor may request that it become entitled to any amount of the 210,000 acre-feet per year of water not contracted for. Such request shall be subject to approval by the State and shall be considered in the light of all similar requests from other contractors. The State shall approve such request only to the extent that the water involved can be put to beneficial use within a reasonable period of time.

(b) **<Project Entitlements>** In the event that the maximum annual entitlements under all contracts executed by the State on or before December 31, 1963, do not aggregate the amount of the minimum project yield as herein defined, the State shall immediately notify all contractors, and each contractor may elect to become entitled to the uncontracted for portion of the minimum project yield in or up to an amount which bears the same ratio to such uncontracted for portion as the contractor's maximum annual entitlement bears to the total of the maximum annual entitlements of all contractors as of that date: *Provided*, That such option may be exercised only to the extent that the water involved can be put to beneficial use within a reasonable period of time, and to the extent that project water can be made available to the District through Project Transportation Facilities. Such option shall become effective on the date that the contractor receives said notice from the State and shall remain in effect through September 30, 1964. If the full amount of such uncontracted for portion of the minimum project yield is not preempted by the contractors under this option on or before September 30, 1964, each contractor may request that it become entitled to any amount of such water not so preempted. Such request shall be subject to approval by the State and shall be considered in the light of all similar requests from other contractors. The State shall approve such request only to the extent that the water involved can be put to beneficial use within a reasonable period of time.

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(c) **<District Payment for Increased Project Entitlement>** Upon the approval of a request or upon the exercise of an option provided for in this article, the District's maximum annual entitlement under Article 7(b) shall be increased by the amount of the additional entitlement thereby obtained by amendment of that article, and the District shall become obligated and hereby agrees to pay to the State a proportionate share of the costs attributable to such increase in accordance with cost allocation principles and procedures set forth in this contract. The service of and payment for said increased entitlement shall in all respects be subject to the terms and conditions of this contract.

9. **Obligation to Deliver Water Made Available.** Project water made available to the District pursuant to Article 6 shall be delivered to the District by the State at the delivery structures established in accordance with Article 10. At any time or times the District may refuse to accept delivery of water made available to it: *Provided*, That in such event, the District shall remain obligated to make all payments required under this contract.

10. **Delivery Structures.**

(a) **<Determination of Size and Location of Delivery Structures>** Project water made available to the District pursuant to this contract shall be delivered to the District at such locations and times and through delivery structures of such capacities as are requested by the District and approved by the State.

(b) **<District Requests for Initial Delivery Structures>** Pursuant to subdivision (a) of this article, the District shall furnish to the State on or before December 31, 1961, its written requests as to:

(1) The location of delivery structures for delivery of project water to it.

(2) The time at which project water is first to be delivered through each such delivery structure.

(3) The maximum instantaneous flow capacity in cubic feet per second to be provided in each such delivery structure.

(4) The maximum amount of water in acre-feet to be delivered in any one month through each such delivery structure.

(5) The total combined maximum instantaneous flow capacity in cubic feet per second to be provided by all such delivery structures.

(6) The total maximum amount of water in acre-feet to be delivered in any one month through all such delivery structures.

(c) **<Requests by District for Additional Delivery Structures>** From time to time the District may request delivery structures in addition to those requested pursuant to subdivision (b) of this article.

(d) **<District to Advance Funds for Additional Delivery Structures>** The District shall pay all of the costs of delivery structures for the delivery of project water to it, and shall deposit with the State, prior to the commencement of construction of any such delivery structure, an amount of money estimated by the State to be sufficient to cover the costs thereof.

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11. Measurement of Water Delivered.

(a) **<Measurement by State>** The State shall measure all project water delivered to the District and shall keep and maintain accurate and complete records thereof. For this purpose, the State shall install, operate, and maintain at all delivery structures for delivery of project water to the District such measuring devices and equipment as are satisfactory and acceptable to both parties. Said devices and equipment shall be examined, tested, and serviced regularly to insure their accuracy. At any time or times, the District or any other contractor may inspect such measuring devices and equipment, and the measurements and records taken therefrom.

(b) **<District to Advance Funds for Measuring Devices>** The District shall pay all of the costs of acquiring and installing the measuring devices and equipment provided for in subdivision (a) of this article, and shall deposit with the State, prior to such acquisition and installation, an amount of money estimated by the State to be sufficient to cover such costs.

12.[26] Priorities, Amounts, Times, and Rates of Delivery.

(a) **<Procedure for Determining Water Delivery Schedule>** The amounts, times, and rates of delivery of project water to the District during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(1) On or before October 1 of each year, the District shall submit in writing to the State a preliminary water delivery schedule, subject to the provisions of this article and Articles 6(b), 6(c), 7(b), 10, and 17, indicating the amounts of water desired by the District during each month of the succeeding five (5) years.

(2)[27] Upon receipt of a preliminary schedule the State shall review it and, after consultation with the District, shall make such modifications in it as are necessary to insure the delivery of the annual quantity allocated to the District in accordance with Article 18 and to insure that the amounts, times, and rates of delivery to the District will be consistent with the State's overall delivery ability, considering the then current delivery schedules of all contractors. On or before December 1 of each year, the State shall determine and furnish to the District the water delivery schedule for the next succeeding year which shall show the amounts of water to be delivered to the District during each month of that year.

(3) A water delivery schedule may be amended by the State upon the District's written request. Proposed amendments shall be submitted by the District within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the State in like manner as the schedule itself.

(b) **<Limit on Peak Deliveries of Water>** In no event shall the State contract to deliver to any contractor through all delivery structures provided for such contractor a total amount of project water in any year greater than the contractor's annual entitlement for that year; nor to deliver to any contractor from the project transportation facilities downstream from Pumping Plant VI in any one month of any year a total amount of project water greater than eleven percent (11%) of such contractor's annual entitlement for that year; nor to deliver to any

26 Title only: Amendment 22
27 Amended: Amendment No. 22

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contractor from the project transportation facilities upstream from said Pumping Plant VI in any one month of any year a total amount of project water greater than the sum of eighteen percent (18%) of that portion of such contractor's annual entitlement for that year to be put to agricultural use, as determined by the State, and eleven percent (11%) of that portion of such contractor's annual entitlement for that year to be put to municipal use, as determined by the State: *Provided*, That if the State delivers project water to any contractor through delivery structures both downstream and upstream from said Pumping Plant VI, the foregoing limitations shall be based on an appropriate apportionment of such contractor's annual entitlement for the respective year to the respective portions of such contractor's service area to which delivery is made from the project transportation facilities downstream from said Pumping Plant VI and from the project transportation facilities upstream therefrom: *Provided further*, That the respective percentages set forth hereinabove may be revised for a particular contractor by amendment of this subdivision after submission to the State of that contractor's requests with respect to maximum monthly deliveries, such revision being subject to approval by the State and subject to advancement to the State by the contractor of funds sufficient to cover any additional costs of the project transportation facilities occasioned thereby; the amount of such funds to be determined pursuant to Article 24(d).

(c)[28] **<Limit on Rate of Delivery to District>** In no event shall the State be obligated to deliver water to the District through all delivery structures at a total combined instantaneous rate of flow exceeding one hundred eighty-four (184) cubic feet per second, except as this rate of flow may be revised by amendment of this article.

<(d)[29] **Delivery of Water Not Delivered in Accordance With Schedule - Deleted>**

(e)[30] **Delivery of Carry-over Entitlement Water**

Upon request of the District, the State shall make Carry-over Entitlement Water available for delivery to the District during the first three months of the next year, to the extent that such deliveries do not adversely affect current or future project operations, as determined by the State. The State's determination shall include, but not be limited to the operational constraints of project facilities, filling of project conservation storage, flood control releases and water quality restrictions.

Carry-over of entitlement water shall be limited to entitlement water that was included in the District's approved delivery schedule for October, November and December, but was not delivered due to:

(1) scheduled or unscheduled outages of facilities within the District's service area; or

(2) a delay in the planned application of a contractor's annual entitlement water for pre-irrigation; or

(3) a delay in the planned spreading of the District's annual entitlement water for ground water storage.

28 Amended: Amendment No. 9
29 Amended: Amendments No. 1 and 22
30 Amended: Amendment No. 20

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After determining that the carry-over of entitlement water would not adversely affect project operations, the State shall notify the District of the amount of entitlement water to be carried over to the following January through March period. The notification shall include the proposed terms and conditions consistent with this Article 12(e) that would govern the delivery of the Carry-over Entitlement Water.

The District agrees to pay all significant identifiable costs associated with its Carry-over Entitlement Water, as determined by the State.

All scheduling and delivery of Carry-over Entitlement Water shall be carried out pursuant to the provisions of this contract.

The District agrees to forego the delivery of any Carry-over Entitlement Water that is lost because of project operations or is not delivered by March 31 of the next year.

Any Carry-over Entitlement Water foregone by the District will become a part of the current year's total project supply.

(f)[31] Priorities

Each year water deliveries to the contractors shall be in accordance with the following priorities to the extent there are conflicts:

First, project water to meet scheduled deliveries of contractors' annual entitlements for that year.

Second, interruptible water to the extent contractors' annual entitlements for that year are not met by the first priority.

Third, project water to fulfill delivery requirements pursuant to Article 14(b).

Fourth, project water previously stored pursuant to Articles 12(e) and 56.

Fifth, nonproject water to fulfill contractors' annual entitlements for that year not met by the first two priorities.

Sixth, additional interruptible water delivered to contractors in excess of their annual entitlements for that year.

Seventh, additional nonproject water delivered to contractors in excess of their annual entitlements for that year.

13. <u>Responsibilities for Delivery and Distribution of Water</u>.

(a) <State Not Liable for Operation Beyond Delivery Structures> Neither the State nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of project water supplied to the District after such water has passed the delivery structures established in accordance with Article 10; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water beyond said delivery structures; and the District shall indemnify and

31 Amended: Amendment No. 22

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hold harmless the State and its officers, agents, and employees from any such damages or claims of damages.

(b) <District Not Liable for Operation Upstream From Delivery Structures> Neither the District nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of project water before such water has passed the delivery structures established in accordance with Article 10; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water before it has passed said delivery structures.

14.[32] <u>Curtailment of Delivery</u>.

(a) State May Curtail Deliveries

The State may temporarily discontinue or reduce the delivery of project water to the District hereunder for the purposes of necessary investigation, inspection, maintenance, repair, or replacement of any of the project facilities necessary for the delivery of project water to the District, as well as due to outages in, or reduction in capability of, such facilities beyond the State's control or unuseability of project water due to an emergency affecting project facilities. The State shall notify the District as far in advance as possible of any such discontinuance or reduction, except in cases of emergency, in which case notice need not be given.

(b) District May Receive Later Delivery of Water Not Delivered

In the event of any discontinuance or reduction of delivery of project water pursuant to subdivision (a) of this article, the District may elect to receive the amount of annual entitlement which otherwise would have been delivered to it during such period under the water delivery schedule for that year at other times during the year or the succeeding year to the extent that such water is then available and such election is consistent with the State's overall delivery ability, considering the then current delivery schedules of annual entitlement to all contractors.

15. <u>Use of Water</u>.

(a) <State Approval of Sale of Water by District Outside Boundaries> No sale or other disposal of project water delivered to the District pursuant to this contract shall be made by the District for use of such water outside the District which would, in the judgment of the State, materially impair the District's capacity to make payments to the State as provided for in this contract. Except insofar as such water is sold by the District to the United States, the State of California, or to purchasers for use within areas which are outside the areas proposed to be served by the State with water made available by the System, project water delivered to the District pursuant to this contract shall not be sold or otherwise disposed of by the District for use outside the District without the prior written consent of the State. The District shall notify the State as promptly as feasible of all sales or other disposals of project water made or proposed to be made by the District for use outside the District.

(b) <State Approval of Organization of District> While this contract is in effect, no change shall be made in the organization of the District which would materially impair the

32 Amended: Amendment 1 and 22

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District's capacity to make payments to the State as provided for herein. The District shall notify the State as promptly as feasible of any change or proposed change in the District's boundaries.

(c) <Change in District Boundaries> In the event of annexation by the District of territory lying within an area served or to be served by the State with project water pursuant to a contract between the State and another contractor, and subject to the consummation of appropriate agreements between the State, the District, and such other contractor, the District's annual entitlements and maximum annual entitlement under this contract shall be increased by the amounts of the annual entitlements and maximum annual entitlement, respectively, contracted for by said contractor for use in said annexed territory. In the event of annexation by the District of territory lying within an area proposed to be served by the State with project water, but for which no contract has been executed by the State for service of project water for use in such annexed territory, the District's annual entitlements and maximum annual entitlement under this contract, at the request of either the State or the District, shall be increased by the amounts of the prospective annual entitlements and maximum annual entitlement, respectively, allocated or assigned by the State for use in said annexed territory. Upon any increase in the District's annual entitlements and maximum annual entitlement pursuant to this subdivision, Table A included in Article 6(c), and Article 7(b) shall be amended accordingly and the District shall become obligated and hereby agrees to pay to the State a proportionate share of the costs attributable to such increase in accordance with cost allocation principles and procedures set forth in this contract. The service of and payment for such increased annual entitlements and maximum annual entitlements shall in all respects be subject to the terms and conditions of this contract.

(d) <No Other Project Contract within District Boundary> The State shall make no other contract to supply water for use within the District's boundaries without the consent of the Board of Supervisors of the District.

16. <u>Continuity and Dependability of Water Supply</u>.

(a)[33] Limit on Total of all Maximum Annual Table A Amounts

The District's Maximum Annual Table A Amount hereunder, together with the maximum Table A amounts of all other contractors, shall aggregate no more than 4,185,000 acre-feet of project water.

(b) <State to Perfect Water Rights> The State shall make all reasonable efforts to perfect and protect water rights necessary for the System and for the satisfaction of water supply commitments under this contract.

(c) <State to Report on Ability to Meet Future Water Demands> Commencing within two (2) years from the year of initial project water delivery to the District, the State shall submit to the District at not more than five-year intervals a report on the State's ability to meet future demands for project water and for supplemental water, and on the State's plans for constructing additional project conservation facilities and supplemental conservation facilities. Such reports shall include all estimates, projections, and other data which the State deems relevant thereto.

33 Amended: Amendments No. 2, 22, and 23

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(d) <Construction of Additional and Supplemental Conservation Facilities> Bond funds required to be expended for the construction of additional facilities of the System under the provisions of Section 12938 of the Water Code shall be expended only for construction of additional project conservation facilities as defined herein, and related, appurtenant facilities necessary and desirable to meet local needs: *Provided*, That if at any time after 1985 the State finds that a part or all of such bond funds are not then required for the above purpose, and will not be so required within the next succeeding ten (10) years, such bond funds may be used, to the extent permitted in the Bond Act, to construct supplemental conservation facilities as defined herein.

(e) <Furnishing of Supplemental Water> In planning and designing supplemental conservation facilities the State shall give consideration to the requirements and demands for supplemental water of the District and others who have contracted for project water. Entitlements to supplemental water shall be obtained, and repayment therefor shall be arranged, in contracts separate from contracts for project water.

17. <u>Construction of Project Facilities</u>.

(a) <Determination of Aqueduct Capacities> Subject to the rights of the District under subdivision (b) of this article and the other provisions of this contract, the State shall provide in each aqueduct reach of the project transportation facilities such maximum monthly delivery capability for the transport and delivery of project water to the District as, in the judgment of the State, will best serve the interests of the District and all other contractors entitled to delivery of project water from or through said facilities: *Provided*, That prior to December 31, 1961, the District shall furnish to the State a written request specifying such maximum monthly delivery capabilities, and the State shall give full consideration to such request in planning and designing said facilities.

(b) <Criteria for Determining Capacity of Transportation Facilities> The State shall design and construct the project transportation facilities so as to provide in each reach thereof, including reservoirs, the capacity necessary to enable delivery of project water in each year to the District and to other contractors in the maximum monthly amounts and at the locations, times, and maximum rates specified or provided for in their respective contracts for such year, and shall include in each such reach such capacity as is economically justified in the judgment of the State to compensate for scheduled outages for purposes of necessary investigation, inspection, maintenance, repair or replacement of project facilities, and for losses of water due to evaporation, leakage, seepage, or other causes. Subject to Articles 6(c), 7(b), 12(b), and 12(c), the capacity so to be provided by the State for each reach of the project transportation facilities necessary for transporting water to the District shall be sufficient to enable delivery to the District in each month of any year of an amount of water up to but not exceeding the sum of eleven percent (11%) of that portion of the District's annual entitlement for the respective year to be put to municipal use and eighteen percent (18%) of that portion of the District's annual entitlement for the respective year to be put to agricultural use, all as determined by the State, and, upon completion of the project facilities, to enable delivery to the District in each month of any year of an amount of water up to but not exceeding the sum of eleven percent (11%) of that portion of the District's maximum annual entitlement to be put to municipal use in the respective year and eighteen percent (18%) of that portion of the District's

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maximum annual entitlement to be put to agricultural use in the respective year, all as determined by the State: *Provided*, That regulatory storage reservoirs included in the project transportation facilities may be utilized in conjunction with conveyance capacity provided in said facilities for delivery to the District of the foregoing monthly amounts, subject to the retention at all times, except during periods of emergency, in each such reservoir of an amount of stored water reasonably sufficient to meet emergency requirements of the District for project water during the respective year.

(c) **<Inspection of Project Plans and Specifications>** The District shall have a reasonable opportunity to inspect and study the State's plans and specifications for all project facilities and may make comments and recommendations thereon to the State. Such privilege shall also extend to any plans and specifications or proposed agreements for the use by the State, in conjunction with the project facilities, of facilities owned by an entity other than the State. The State shall not enter into any such agreement which would impair the State's ability to perform fully its obligations under this contract.

(d) **<Restriction on Bond Sales>** No bonds shall be sold nor funds expended under the authority of the Bond Act for the construction of any aqueduct or appurtenance thereto included in the System unless and until contracts are executed which will insure the recovery by the State of at least seventy-five percent (75%) of those capital costs of the particular aqueduct and any appurtenances thereto which shall be reimbursable by the contractors as determined by the State; nor shall any bonds be sold or funds expended under the authority of the Bond Act for the construction of any project conservation facility or supplemental conservation facility, unless and until contracts are executed which, together with estimated revenues from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities and supplemental conservation facilities, will insure the recovery by the State of at least seventy-five percent (75%) of those capital costs of the particular facility which shall be reimbursable by the contractors as determined by the State: *Provided*, That the foregoing limitations shall not apply with respect to: (1) surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisition of lands, easements and rights of way, relocation work, and essential administrative work in connection therewith; (2) construction for which appropriations had been made prior to approval of the Bond Act by the voters of the State of California; and (3) construction of facilities pursuant to an agreement between the State and the United States.

(e) **<Failure to Complete Facilities>** In the event that the State fails or is unable to complete construction of any portion or portions of the project transportation facilities necessary to deliver water to the District as provided in this contract, and gives the District written notice thereof the District, if it be not then in default and without exclusion of such other rights as it may have under this contract, may exercise the following options:

(1) The District may provide funds to the State in such amounts and at such times as may be necessary to enable the State to complete construction of such incompleted portion or portions of the project transportation facilities to the extent necessary for the transport and delivery of water to the District as provided for in this contract: *Provided*, That the State shall be and remain the owner of such project transportation facilities or portions thereof constructed in whole or in part with funds

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provided by the District, and shall be and remain obligated to operate, maintain, repair and replace such facilities to the full extent contemplated in this contract: *Provided further*, That the amount of any funds so provided by the District shall be credited by the State against the District's payment obligation under the capital cost component of the Transportation Charge, but the District shall be and remain obligated to pay its share of any capital costs of the above-described facilities not paid for with such funds, together with its proportionate share of the operation, maintenance, power and replacement costs of such facilities.

(2) The District may at its own expense, and on a joint venture basis if such an arrangement is made with other contractors having similar options, connect to the project transportation facilities constructed by the State for the purpose of receiving project water to which it is entitled under this contract. In such event and notwithstanding any other provisions of this contract, the structures for delivery of project water to the District pursuant hereto shall thereafter be deemed to be located at such point of connection. Specific arrangements for acquiring, constructing, operating, maintaining, and replacing the District's facilities at the point of connection thereof with the State's facilities shall be in accordance with terms and conditions mutually agreed upon by the parties: *Provided*, That the State shall be and remain the owner of all facilities constructed by it to said point of connection, and the District shall be and remain obligated to pay its proportionate share of the costs thereof.

(f)[34] **<Minimum Reach Capacity>** The State shall design and construct the project transportation facilities so that the terminal turnout in Santa Clara County shall be located approximately 3,000 feet east of Piedmont Road near Penitencia Creek and each aqueduct reach shall have at least the capacity specified in Article 23.

(g) [35]**<u>Adjustments Due to Supplemental Financing Costs</u>**

(1) If a contractor, with approval of the State, advances funds to the State to assist the State in financing construction of project facilities (not including delivery structures, measuring devices and excess capacity), such advance shall be amortized by means of annual credits to the contractor having made such advance of funds to the State, with such credits being equal to the actual bond service obligations payable by such contractor by reason of such advance or, if no bonded debt was incurred, then such credits shall be sufficient to cover the repayment of principal and interest costs which would have resulted if the contractor had sold bonds for the purpose of funding the advance as determined by the State.

(2) If, after May 1, 1969, any source of funds other than those provided by the Bond Act is employed to finance construction of specific project facilities, any additional costs incurred because of such financing will not be charged to the contractors, except for adjustments to the "project interest rate".

34 Amended: Amendment No. 1
35 Amended: Amendment No. 6

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18.[36] Shortage in Water Supply.

(a) Shortages; Delivery Priorities

In any year in which there may occur a shortage due to drought or any other cause whatsoever, in the supply of project water available for delivery to the contractors, with the result that such supply is less than the total of the annual entitlements of all contractors for that year, the State shall allocate the available supply in proportion to each contractor's annual entitlement as set forth in its Table A for that year and shall reduce the allocation of project water to each contractor using such water for agricultural purposes and to each contractor using such water for other purposes by the same percentage of their respective annual entitlements for that year: *Provided*, that the State may allocate on some other basis if such is required to meet minimum demands of contractors for domestic supply, fire protection, or sanitation during the year. If a contractor is allocated more water than it requested, the excess water shall be reallocated among the other contractors in proportion to their annual entitlements as provided for above. The foregoing provisions of this subdivision shall be inoperative to the extent necessary to comply with subdivision (c) of this article and to the extent that a contractor's annual entitlement for the respective year reflects established rights under the area of origin statutes precluding a reduction in deliveries to such contractor.

<(b) Permanent Shortage; Reduction of Entitlements - Deleted>

(c) Permanent Shortage; Contracts for Areas-of-Origin

In the event that the State, because of the establishment by a party of a prior right to water under the provisions of Sections 11460 through 11463 of the Water Code, enters into a contract with such party for a dependable supply of project water, which contract will cause a permanent shortage in the supply of project water to be made available to the District hereunder:

(1) The State shall: (i) equitably redistribute the costs of all transportation facilities included in the System among all contractors for project water, taking into account the diminution of the supply to the District and other prior contractors in accordance with the terms of their contracts, and (ii) revise the District's annual entitlements and maximum annual entitlement, by amendment of Table A of this contract to correspond to the reduced supply of project water to be made available to the District: *Provided*, That such redistribution of costs of transportation facilities shall not be made until there has been reasonable opportunity for the District to exercise the option provided for in (2) below, and for other prior contractors to exercise similar options.

(2) The District, at its option, shall have the right to use any of the project transportation facilities which by reason of such permanent shortage in the supply of project water to be made available to the District are not required for delivery of project water to the District, to transport water procured by it from any other source: *Provided*, That such use shall be within the limits of the capacities provided in the project transportation facilities for service to the District under this contract: *Provided further*, That, except to the extent such limitation in Section 1293l of the Water Code be changed, the District shall not use the project transportation facilities under this option to transport

36 Amended entire article: Amendment 22

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water the right to which was secured by the District through eminent domain unless such use be approved by the Legislature by concurrent resolution with a majority of the members elected to each house voting in favor thereof. This option shall terminate upon a redistribution of costs of transportation facilities by the State pursuant to (1) above. In the event that this option is exercised, the State shall take such fact into account in making such redistribution of costs, and shall offset such use as is made of the project transportation facilities pursuant thereto against any reduction in the District's payment obligation hereunder resulting from such redistribution of costs.

(d) Reinstatement of Entitlements

If after any revision of annual entitlements and maximum annual entitlements pursuant to subdivision (c) of this article, circumstances arise which, in the judgment of the State, justify a revision upward of the same, the State shall, with the consent of the affected contractor, reinstate proportionately the previously reduced entitlements of such contractor to the extent deemed justified, and shall equitably redistribute the costs of the project transportation facilities if inequities would otherwise occur as a result of such reinstatement of entitlements.

(e) Advance Notice of Delivery Reductions

The State shall give the District written notice as far in advance as possible of any reduction in deliveries to it which is to be made under subdivision (a) of this article and, to the extent possible, shall give the District written notice five (5) years in advance of any reduction in its annual entitlements and maximum annual entitlement under subdivision (c) of this article. Reports submitted to the District pursuant to Article 16(c) may constitute such notices.

(f) No Liability for Shortages

Neither the State nor any of its officers, agents, or employees shall be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available for delivery to the District under this contract caused by drought, operation of area of origin statutes, or any other cause beyond its control.

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19. <u>Water Quality</u>.

(a) <Water Quality Objectives> It shall be the objective of the State and the State shall take all reasonable measures to make available, at all delivery structures for delivery of project water to the District, project water of such quality that the following constituents do not exceed the concentrations stated as follows:

Constituent	*Unit*	*Monthly Average*	*Average for any 10-year Period*	*Maximum*
Total Dissolved Solids	ppm.	440	220	
Total Hardness	ppm.	180	110	
Chlorides	ppm.	110	55	
Sulfates	ppm.	110	20	
Sodium Percentage	%	50	40	
Fluoride	ppm.			1.5
Lead	ppm.			0.1
Selenium	ppm.			0.05
Hexavalent Chromium	ppm.			0.05
Arsenic	ppm.			0.05
Iron and Manganese together	ppm.			0.3
Magnesium	ppm.			125
Copper	ppm.			3.0
Zinc	ppm.			15
Phenol	ppm.			0.001

<The

<Standard Provisions for later contracts added Boron in this table. While it is not included here, it is monitored by the Department.>

(b) <Records of Water Quality> The State shall regularly take samples of water at each delivery structure for delivery of project water to the District, and shall make chemical and physical analyses and tests of such samples. The State shall keep accurate and complete records of all such analyses and tests, which records shall be available for inspection by the District at any time or times.

(c) <No Liability for Failure to Meet Quality Objectives> If through no negligence of the State or its officers, agents, or employees, the State is unable to attain the quality objectives set forth in subdivision (a) of this article, neither the State nor any of its officers, agents, or employees shall be liable in any manner whatsoever for such deviation from said quality objectives.

(d) <Bureau Water> The provisions of this article shall not apply to Bureau water made available for delivery to the District.

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20. **Suspension of Service.** In the event of any default by the District in the payment of any money required to be paid to the State hereunder, the State may, upon not less than six months' notice to the District, suspend deliveries of water under this contract for so long as such default continues: *Provided*, That during such period the District shall remain obligated to make all payments required under this contract: *Provided further*, That notwithstanding the above notice provision, no Bureau water shall be furnished to the District pursuant to Article 6(b) if the District is in arrears in the payment to the State of any charges of the State levied or established by the State hereunder and necessary for the purpose of raising revenues to meet the payment by the State to the United States of the State's obligation under the Bureau-State contract. Action taken pursuant to this article shall not deprive the State of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

21.[37] Interruptible Water Service

(a) Allocation of Interruptible Water

Each year from water sources available to the project, the State shall make available and allocate interruptible water to contractors in accordance with the procedure in Article 18(a). Allocations of interruptible water in any one year may not be carried over for delivery in a subsequent year, nor shall the delivery of interruptible water in any year impact a contractor's approved deliveries of annual entitlement or the contractor's allocation of water for the next year. Deliveries of interruptible water in excess of a contractor's annual entitlement may be made if the deliveries do not adversely affect the State's delivery of annual entitlement to other contractors or adversely affect project operations. Any amounts of water owed to the District as of the date of this amendment pursuant to former Article 12 (d), any contract provisions or letter agreements relating to wet weather water, and any Article 14 (b) balances accumulated prior to 1995, are canceled. The State shall hereafter use its best efforts, in a manner that causes no adverse impacts upon other contractors or the project, to avoid adverse economic impacts due to a contractor's inability to take water during wet weather.

(b) Rates

For any interruptible water delivered pursuant to this article, contractors shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as if such interruptible water were entitlement water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State. The State shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if interruptible water were not scheduled for or delivered to the contractor. Only those contractors not participating in the repayment of the capital costs of a reach shall be required to pay any use of facilities charge for the delivery of interruptible water through that reach.

37 Amended: Amendments No. 14, 15, 17, 21, and 22

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(c) Contracts

To obtain a supply of interruptible water, a contractor shall execute a further contract with the State which shall be in conformity with this article and shall include at least provisions concerning the scheduling of deliveries of interruptible water and times and methods of payment.

C. PAYMENT PROVISIONS

21.5. <u>Bureau Water Charge</u>.

(a)[38] **<Annual Charge>** The payments to be made by each contractor receiving service of Bureau water shall include an annual charge, during the period of such service, designated as the Bureau Water Charge. This charge shall return to the State during such period all amounts paid to the Bureau by the State to obtain water for the contractor under the Bureau-State contract. Payments of this charge shall be made in advance so as to provide the State with sufficient funds to make payments to the Bureau as required under the Bureau-State contract. For each contractor, the Bureau Water Charge shall be the sum of the following: (1) the product of $3.50 and that portion of the amount of water to be made available for delivery to the contractor in the respective Bureau water year under its contract which is Bureau agricultural water as determined by the State; (2) the product of $10.00 and that portion of the amount of water to be made available for delivery to the contractor in the respective Bureau water year under its contract which is Bureau municipal, industrial and domestic water as determined by the State; and (3) the cost of the pro rata share of water lost from the project transportation facilities due to evaporation, leakage, seepage, or other causes, taking into account the quantities of Bureau agricultural water and Bureau municipal, industrial and domestic water made available for delivery to the contractor in the respective Bureau water year under its contract: *Provided*, That if in any year the amount of Bureau water to be made available for delivery to the contractor under its contract is reduced by reason of shortage as provided in Article 6(b)(1), the Bureau Water Charge shall be adjusted on the basis of such reduced amount. In computing the charge, the State shall determine the amounts of Bureau agricultural water and Bureau municipal, industrial, and domestic water to be made available for delivery to the contractor on the basis of estimates of Bureau water use of such water made pursuant to subdivision (c) of this article: *Provided further*, That prior to March 1, 1968, fifty-two percent (52%) and thereafter forty-five percent (45%) of all Bureau water delivered to the District under this contract and used for ground water recharge or storage shall be deemed to be Bureau agricultural water and the remainder Bureau municipal, industrial, and domestic water: *Provided further*, That for purposes of the first year's advance payment fifty-four percent (54%) of the amount of Bureau water made available for delivery to the District under this contract shall be estimated to be Bureau agricultural water and the remainder Bureau municipal, industrial, and domestic water; *Provided further*, That an adjustment in the following year's bill shall be made in the event that the proportion between Bureau agricultural water and Bureau municipal, industrial, and domestic water differs from the estimate.

38 Amended: Amendment No. 1

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(b) **<Refusal of Water Does Not Affect Obligation>** The District's failure or refusal to accept delivery of Bureau water made available for delivery to it under Article 6(b) and Table A included in Article 6(c) shall not affect the computation of the Bureau Water Charge as provided for in subdivision (a) of this article and shall in no way relieve the District of its obligation to make payment of the charge, as so computed, pursuant to Article 29.

(c) **<District Water Measurements>** The District shall measure separately, with equipment satisfactory to the State, Bureau water delivered to it for ground water recharge, Bureau agricultural water delivered to it for surface use, and Bureau municipal, industrial, and domestic water delivered to it for surface use, and shall keep and maintain accurate and complete records thereof. At any time or times, the State may inspect such measuring equipment, and the measurements and records taken therefrom.

(d) **<District Obligation for Payments>** Obligations of the District arising out of, pursuant, or incidental to the Bureau-State contract shall constitute a general obligation of the District notwithstanding the default in the payment to the District by individual water users of assessments, tolls, or other charges levied by or owing to the District and the District agrees to use all powers and resources available to it under the laws of the State of California to collect the funds necessary to meet such obligations.

22. <u>Delta Water Charge</u>.

(a) **<Payment of Reimbursable Costs of Project Conservation Facilities>** The payments to be made by each contractor for project water shall include an annual charge designated as the Delta Water Charge. This charge, together with the total revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities, shall return to the State during the project repayment period all costs of the project conservation facilities, including capital, operation, maintenance, power, and replacement costs, which are allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivision (e) of this article during the project repayment period. Wherever reference is made, in connection with the computation or determination of the Delta Water Charge, to the costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities which are reimbursable by the contractors as determined by the State.

(b)[39] **<Delta Water Rate Until 1970; Components of Rate Thereafter>** For each contractor receiving project water in any year through December 31, 1969, the Delta Water Charge shall be the product of $3.50 and the contractor's annual entitlement to project water for the respective year. For each contractor receiving project water in the year 1970, the Delta Water Charge shall be the product of $6.65 and the contractor's annual entitlement to project water for that year. The $6.65 rate for the year 1970 shall consist of a capital cost component of $5.04 and a minimum operation, maintenance, power and replacement component of $1.61. For each contractor receiving project water in the year 1971, the Delta Water Charge shall be the product of $7.24 and the contractor's annual entitlement to project water for that year. The $7.24 rate for the year 1971 shall consist of a capital cost component of $5.44 and a minimum operation, maintenance, power and replacement component of $1.80. After December 31, 1971, the Delta

39 Amended: Amendments No. 6 and 8

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Water Charge shall consist and be the sum of the following components as these are computed in accordance with subdivisions (c) and (d) of this article: a capital cost component; a minimum operation, maintenance, power and replacement component; and a variable operation, maintenance, power and replacement component.

(c) **<Computation of the Components of the Delta Water Rate>** The capital cost, the minimum operation, maintenance, power, and replacement, and the variable operation, maintenance, power, and replacement components of the Delta Water Charge, together with that portion of the revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities which is allocated by the State to repayment of the respective category of costs, shall return to the State during the project repayment period, respectively, the following categories of the costs allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivision (e) of this article: (1) capital costs; (2) operation, maintenance, power, and replacement costs incurred irrespective of the amount of project water delivered to the contractors; and (3) operation, maintenance, power, and replacement costs incurred in an amount which is dependent upon and varies with the amount of project water delivered to the contractors: *Provided*, That each of the above categories of costs shall be inclusive of the appropriate costs properly chargeable to the generation and transmission of electrical energy in connection with operation of project conservation facilities. Each component of the Delta Water Charge shall be computed on the basis of a rate which, when charged during the project repayment period for each acre-foot of the sum of the yearly totals of annual entitlements of all contractors, will be sufficient, together with that portion of the revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities which is allocated by the State to repayment of the respective category of costs, to return to the State during the project repayment period all costs included in the respective category of costs covered by that component. Each such rate shall be computed in accordance with the following formula:

$$\frac{(c_1 - r_1)(1+i)^{-1} + (c_2 - r_2)(1+i)^{-2} + \ldots + (c_n - r_n)(1+i)^{-n}}{e_1(1+i)^{-1} + e_2(1+i)^{-2} + \ldots + e_n(1+i)^{-n}}$$

Where:

i	=	The project interest rate.
c	=	The total costs included in the respective category of costs for the respective year of the project repayment period.
r	=	That portion of the revenues derived from the sale or other disposal of electrical energy allocated by the State to repayment of the costs included in the respective category for the respective year of the project repayment period.
1, 2, and n appearing below c and r	=	The respective year of the project repayment period for which costs are included in the respective category, n being the last year of the project repayment period.

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e	=	With respect to the capital cost and minimum operation, maintenance, power, and replacement components, the total of annual entitlements to project water of all contractors for the respective year of the project repayment period.
e	=	With respect to the variable operation, maintenance, power, and replacement component, the total of the amounts of project water delivered to all contractors for the respective year of the expired portion of the project repayment period, together with the total of annual entitlements to project water of all contractors for the respective year of the unexpired portion of the project repayment period.
1, 2, and *n* appearing below		
e	=	The respective year of the project repayment period in which the annual entitlements or project water deliveries occur, *n* being the last year of the project repayment period.
n used as an exponent	=	The number of years in the project repayment period.

(d) **<Application of Component Rates>** The capital cost and minimum operation, maintenance, power, and replacement components of the Delta Water Charge shall be the product of the appropriate rate computed under subdivision (c) of this article, and the contractor's annual entitlement to project water for the respective year. The variable operation, maintenance, power, and replacement component of the charge shall be the product of the appropriate rate computed under subdivision (c) of this article and the number of acre-feet of project water delivered to the contractor during the respective year: *Provided*, That when project water has been requested by a contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the contractor to accept delivery thereof, said variable component during such period shall be the product of said rate per acre-foot and the sum of the number of acre-feet of project water delivered to the contractor and the number of acre feet wasted.

(e)[40] **<Allocations to Project Purposes>** Prior to the time that additional project conservation facilities or supplemental conservation facilities are constructed, the Delta Water Charge shall be determined on the basis of an allocation to project purposes, by the separable cost-remaining benefits method, of all actual and projected costs of all those initial project conservation facilities located in and above the Delta, and upon an allocation to the purposes of water conservation and water transportation, by the proportionate use of facilities method, of all actual and projected costs of the following project facilities located below the Delta: The aqueduct intake facilities at the Delta, Pumping Plant I (Delta Pumping Plant), the aqueduct from the Delta to San Luis Forebay (O'Neill Forebay), San Luis Forebay (O'Neill Forebay), and San Luis Reservoir: *Provided*, That all of the actual and projected costs properly chargeable to

40 Amended: Amendment No. 10

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the generation and transmission of electrical energy in connection with operation of project conservation facilities shall be allocated to the purpose of water conservation in, above, and below the Delta: *Provided further*, That allocations to purposes the cost of which are to be paid by the United States shall be as determined by the United States.

Commencing in the year in which the State first awards a major construction contract for construction of a major feature of additional project conservation facilities, or first commences payments under a contract with a federal agency in the event a major feature of additional project conservation facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the foregoing allocations and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to the foregoing provisos, of all projected costs of such feature of the additional project conservation facilities: *Provided*, That if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State: *Provided further*, That all costs of additional project conservation facilities incurred prior to the award of a major construction contract, shall be included in the Delta Water Charge computations in the year in which they are incurred.

(f) **<Yearly Recomputation of Rates After 1970>** The rates to be used in determining the components of the Delta Water Charge pursuant to subdivision (d) of this article and to become effective on January 1, 1970, shall be computed by the State in accordance with subdivision (c) of this article prior to that date. Such computation shall include an adjustment which shall account for the difference, if any, between revenues received by the State under the Delta Water Charge prior to January 1, 1970, and revenues which would have been received under the charge prior to that date had it been computed and charged in accordance with subdivision (c) and (d) of this article. Upon such computation, a document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article. The State shall recompute such rates each year thereafter, and each such recomputation shall take account of and reflect increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State incurred to construct the project conservation facilities described in subdivision (e) of this article, annual entitlements, deliveries of project water, project interest rate, revenues from the sale or other disposal of electrical energy, and all other factors which are determinative of such rates. In addition, each such recomputation shall include an adjustment of the rates for succeeding years which shall account for the differences, if any, between projections of costs used by the State in determining said rates for all preceding years, and actual costs incurred by the State during such years. Upon each such recomputation, an appropriately revised copy of the document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article.

(g)[41] **<Supplemental Conservation Facilities>** Upon the construction of the supplemental conservation facilities, the Delta Water Charge shall be paid by all contractors for supplemental water, as well as by contractors for project water, and, together with revenues derived from the sale or other disposal of electrical energy generated in connection with

41 Amended: Amendment No. 10

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operation of project conservation facilities and supplemental conservation facilities, shall return to the State, in addition to those costs of the project conservation facilities allocated to the purpose of water conservation, in, above, and below the Delta pursuant to subdivision (e) of this article, all costs of such supplemental conservation facilities, including capital, operation, maintenance, power, and replacement costs which are allocated to the purpose of water conservation, in, above, and below the Delta pursuant hereto. Commencing in the year in which the State first awards a major construction contract for construction of a major feature of any supplemental conservation facilities, or first commences payments under a contract with a federal agency in the event a major feature of supplemental conservation facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the allocations made pursuant to subdivision (e) of this article, and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to provisos corresponding to those contained in said subdivision (e), of all projected costs of such feature of the supplemental conservation facilities. Commencing in the same year, the computation of the rates to be used in determining the components of the Delta Water Charge shall include the annual entitlements to water under all contracts for supplemental water. If the repayment period of any bonds sold to construct supplemental conservation facilities or the repayment period under any agreement with a federal agency for repayment of the costs of supplemental conservation facilities constructed by such federal agency extends beyond the repayment period of the contract, the Delta Water Charge shall be determined and redetermined on the basis of such extended repayment period as the State determines to be appropriate: *Provided*, That if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State.

(h)[42] **<Payments for Annual Entitlement Adjustments>** Payments by the District pursuant to Articles 7(d) and 7(f) shall be such that the total payments to the State for the capital cost and minimum operation, maintenance, power and replacement components of the Delta Water Charge during the project repayment period shall be the same as if no change in annual entitlement had been made under Article 7(c) and no decrease in water delivery had been made under Article 7 (e).

(1) In the event of a decreased annual entitlement to the District under Article 7(d), the District shall, in addition to the Delta Water Charge computed pursuant to subdivision (d) of this article, pay an amount which shall be the product of the amount of the decrease in the annual entitlement and the difference in the capital cost and minimum operation, maintenance, power and replacement components of the Delta Water Charge for that year and the same components of the Delta Water Charge for the appropriate year in which the annual entitlement was increased under Article 7(c). The appropriate year for which the annual entitlement was so increased shall be the earliest year not offset by a decrease of annual entitlement pursuant to Article 7(d).

(2) In a year in which an increased quantity of water is furnished under Article 7(f), the Delta Water Charge shall be computed pursuant to subdivision (d) of this

42 Amended: Amendment No. 1

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article, and in addition the District shall pay an amount which shall be the product of such increase in quantity and the difference in the capital costs and minimum operation, maintenance, power and replacement components of the Delta Water Charge for that year and the same components of the Delta Water Charge for the appropriate previous year in which the delivery was less than the annual entitlement as provided under Article 7(e). The appropriate previous year shall be the earliest year in which such water was not delivered under Article 7(e) which has not been offset by increased delivery under Article 7(f).

(3) For the purposes of this subdivision, the capital cost and minimum operation, maintenance, power and replacement components of the Delta Water Charge prior to December 31, 1969, shall be deemed to be three dollars and fifty cents ($3.50) per acre-foot of water less the variable operation, maintenance, power and replacement component rate computed under subdivision (c) of this article.

(i)[43] <Local Project as Additional Conservation Facility>

The determination of the rate for water under the Delta Water Charge shall be made by including the appropriate costs and quantities of water, calculated in accordance with subdivisions (c), (d) and (e) above, for all additional project conservation facilities as defined in Article 1(h) hereinabove. In the event a Local Project as defined in Article 1(h)(2) will, pursuant to written agreement between the State and the sponsoring contractor, be considered and treated as an additional project conservation facility for less than the estimated life of the facility, the rate under the Delta Water Charge will be determined on the basis of that portion of the appropriate cost and water supply associated with such facility as the period of time during which such facility shall be considered as an additional project conservation facility bears to the estimated life of such facility. No costs for the construction or implementation of any Local Project are to be included in the Delta Water Charge unless and until the written agreement required by Article 1(h) has been entered into.

(j)[44] <Project Water Purchased by State> In calculating the rate for project water to be paid by each contractor for the Delta Water Charge under subdivisions (c), (d) and (e) above, the component for operation, maintenance, power and replacement costs shall include, but not be limited to, all costs to the State incurred in purchasing water, which is competitive with alternative sources as determined by the State, for delivery as project water.

(j)[45] <Recovery of Water System Revenue Bond Financing Costs> Notwithstanding provisions of Article 22(a) through (i), the capital cost component and the minimum OMP&R component of the Delta Water Charge shall include an annual charge to recover the District's share of the conservation portion of the water system revenue bond financing costs. Charges to the District for these costs shall be calculated in accordance with provisions in Article 50 of this contract. Charges for the conservation portion of the water system revenue bond financing costs shall not be affected by any reductions in payments pursuant to Article 51. <Note: Amendments 19 and 22 erroneously amended Article 22(j) instead of adding/amending a subarticle (k); both are retained here.>

43 Amended: Amendments 18
44 Amendment 18
45 Amendments 19 and 22

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23. Transportation Charge.

The payments to be made by each contractor entitled to delivery of project water from the project transportation facilities shall include an annual charge under the designation Transportation Charge. This charge shall return to the State during the project repayment period those costs of all project transportation facilities necessary to deliver project water to the contractor, including capital, operation, maintenance, power, and replacement costs, which are allocated to the contractor during the project repayment period in accordance with the cost allocation principles and procedures hereinafter set forth. Wherever reference is made, in connection with the computation, determination, or payment of the Transportation Charge, to the costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities which are reimbursable by the contractors as determined by the State. The Transportation Charge shall consist of a capital cost component; a minimum operation, maintenance, power, and replacement component; and a variable operation, maintenance, power, and replacement component, as these components are defined in and determined under Articles 24, 25, and 26, respectively. For the purpose of allocations of costs pursuant to said articles, the project transportation facilities shall be segregated into such aqueduct reaches as are determined by the State to be necessary for such allocations of costs. Subject to such modifications as are determined by the State to be required by reason of any request furnished by the District to the State pursuant to Article 17 (a) of this contract, or by reason of contracts entered into by the State with other contractors, the aqueduct reaches of the project transportation facilities are established as follows: *Provided*, That those costs of the aqueduct reaches from the Delta through the outlet of San Luis Reservoir which are allocated to the purpose of water conservation in, above, and below the Delta for the purpose of determining the Delta Water Charge, as hereinbefore set forth, shall not be included in the Transportation Charge.

[46]Aqueduct Reach	Major Features of Reach
Delta through Bethany Forebay:	Intake Canal Fish Protective Facilities Aqueduct Pumping Plant I Aqueduct (Including Interim Intake Canal and Interim Pumping Plant)
Bethany Forebay to Doolan-Livermore Junction:	South Bay Pumping Plant Aqueduct - min. capacity 300 cfs
Doolan-Livermore Junction through Patterson Reservoir:	Aqueduct - min. capacity 300 cfs Patterson Reservoir
Patterson Reservoir to Del Valle Branch:	Aqueduct - min. capacity 265 cfs

46 Amended: Amendment No. 1

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Del Valle Branch:	Aqueduct - min. capacity 265 cfs Del Valle Pumping Plant Aqueduct - min. capacity 108 cfs Del Valle Reservoir
Del Valle Branch to South Livermore Turnout:	Aqueduct - min. capacity 265 cfs
South Livermore Turnout to Vallecitos Turnout:	Aqueduct – min. capacity 255 cfs
Vallecitos Turnout to Alameda-Bayside Turnout:	Aqueduct - min. capacity 255 cfs
Alameda-Bayside Turnout to Penitenica Turnout:	Aqueduct – min. capacity 180 cfs

24. <u>Transportation Charge - Capital Cost Component</u>.

(a) **<Method of Computation>** The capital cost component of the Transportation Charge shall be sufficient to return to the State those capital costs of the project transportation facilities necessary to deliver water to the contractor which are allocated to the contractor pursuant to subdivision (b) of this article. The amount of this component shall be determined in two steps as follows: (1) an allocation of capital costs to the contractor, and (2) a computation of annual payment of such allocated capital costs and interest thereon, computed at the project interest rate and compounded annually, to be made by the contractor.

(b)[47] **<Allocation of Capital Costs Among Contractors>** In the first step, the total amount of capital costs of each aqueduct reach to be returned to the State shall be allocated among all contractors entitled to delivery of project water from or through the reach by the proportionate use of facilities method of cost allocation and in accordance with (1) and (2) below. The measure of the proportionate use of each contractor of each reach shall be the average of the following two ratios: (i) the ratio of the contractor's maximum annual entitlement to be delivered from or through the reach to the total of the maximum annual entitlements of all contractors to be delivered from or through the reach from the year in which charges are to be paid through the end of the project repayment period and (ii) the ratio of the capacity provided in the reach for the transport and delivery of project water to the contractor to the total capacity provided in the reach for the transport and delivery of project water to all contractors served from or through the reach from the year in which charges are to be paid through the end of the project repayment period. Allocations of capital costs to the District pursuant hereto shall be on the basis of relevant values which will be set forth in Table B of this contract by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach of the project transportation facilities for the transport and delivery of project water to the District, pursuant to Article 17(a): *Provided,* That these values shall be subject to redetermination by the State in accordance with Article 28: *Provided further,* That the principles and procedures set

47 Amended: Amendment No. 22

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forth in this subdivision shall be controlling as to allocations of capital costs to the District. Proportionate use of facilities factors for prior years shall not be adjusted by the State in response to changes or transfers of entitlement among contractors unless otherwise agreed by the State and the parties to the transfer and unless there is no impact on past charges or credits of other contractors.

<PLACEHOLDER: TABLE B WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE B PUBLISHED AS TABLES B-1 AND B-2 IN BULLETIN 132>

(1) The total amount of capital costs allocated to a contractor shall be the sum of the products obtained when there is multiplied, for each aqueduct reach necessary to deliver water to the contractor, the total amount of the capital costs of the reach to be returned to the State under the Transportation Charge by the average of the two foregoing ratios for such reach as said average is set forth in the appropriate table included in its contract.

(2) In the event that excess capacity is provided in any aqueduct reach for the purpose of making project water available in the future to an agency or agencies with which the State has not executed contracts at the time of any allocation of costs pursuant to this subdivision, the prospective maximum annual entitlement or entitlements to be supplied by such excess capacity, as determined by the State, shall be deemed to be contracted for by said agency or agencies for the purpose of such allocation of costs, to the end that the capital costs of providing such excess capacity are not charged to any contractor entitled by virtue of an executed contract to the delivery of project water from or through that aqueduct reach at the time of such allocation. Where additional capacity is provided in any aqueduct reach to compensate for loss of water due to evaporation, leakage, seepage, or other causes, or to compensate for scheduled outages for purposes of necessary investigation, inspection, maintenance, repair or replacement of the facilities of the project facilities, then, for the purpose of any allocation of costs pursuant to this subdivision: (i) the maximum annual entitlement to be delivered from or through the reach of each contractor entitled to delivery of project water from or through the reach shall be increased by an amount which bears the same proportion to the maximum annual delivery capability provided by such additional capacity that the contractor's maximum annual entitlement to be delivered from or through the reach bears to the total of the maximum annual entitlements to be delivered from or through the reach under all contracts; and (ii) the capacity provided in the reach for each contractor entitled to delivery of project water from or through the reach shall be increased in the same proportion that the contractor's maximum annual entitlement to be delivered from or through the reach is increased pursuant to (i) above.

(3) The projected amounts of capital costs to be allocated annually to the District under the capital cost component of the Transportation Charge shall be determined by the State in accordance with the cost allocation principles and procedures set forth in this subdivision, which principles and procedures shall be controlling as to allocations of capital costs to the District. Such amounts will be set forth in Table C by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided

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in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): *Provided*, That these amounts shall be subject to redetermination by the State in accordance with Article 28.

<PLACEHOLDER: TABLE C WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE C PUBLISHED AS TABLE B-14 IN BULLETIN 132>

(c) <Annual Payments of Allocated Capital Costs> In the second step, the District's annual payment of its allocated capital costs and interest thereon, computed at the project interest rate and compounded annually, shall be determined in accordance with a payment schedule established by the State and determined in accordance with the principles set forth in (1), (2), and (3) below, which principles shall be controlling as to the District's payment of its allocated capital costs. The district's payment schedule will be set forth in Table D by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): *Provided*, That the amounts set forth in Table D shall be subject to redetermination by the State, pursuant to Article 28.

(1) The District's annual payment shall be the sum of the amounts due from the District on the District's allocated capital costs for the then current year and for each previous year where each such amount will pay, in not more than fifty (50) equal annual installments of principal and interest, the District's allocated capital costs for the respective year and interest thereon, computed at the project interest rate and compounded annually.

(2) The District may make payments at a more rapid rate if approved by the State.

(3) Such annual payments shall cease when all allocated capital costs and interest thereon, computed at the project interest rate and compounded annually, are repaid.

<PLACEHOLDER: TABLE D WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE D PUBLISHED (UNADJUSTED) AS TABLE B-15 IN BULLETIN 132>

(d) <Payment in Advance for Excess Peaking Capacity> In the event that any contractor, pursuant to Article 12(b), requests delivery capacity in any aqueduct reach which will permit maximum monthly deliveries to such contractor in excess of the percentage amounts specified in said Article 12(b) for the uses designated therein, such contractor shall furnish to the State, in advance of the construction of such aqueduct reach, funds sufficient to cover the costs of providing such excess capacity, which funds shall be in an amount which bears the same proportion to the total capital costs of such reach, including the costs of providing such excess capacity, as such excess capacity bears to the total capacity of such reach, including such excess capacity. For the purpose of any allocation of costs pursuant to subdivision (b) of this article, the total capital costs of such aqueduct reach shall be allocated among all contractors entitled to delivery of project water from or through the reach in the following manner: (1) The costs which would have been incurred for such reach had no such excess capacity been provided shall be

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estimated by the State and allocated among all such contractors in the manner provided in said subdivision (b); and (2) the amount of the difference between said estimated costs and the projected actual costs of such reach shall be allocated to the contractor or contractors for which such excess capacity is provided. Where such excess capacity is provided for more than one contractor, the costs allocated to them under (2) above shall be further allocated between or among them in amounts which bear the same proportion to the total of said allocated costs as the amount of such excess capacity provided for the respective contractor bears to the total of such excess capacity provided in such reach. In the event that the funds advanced by a contractor pursuant to this subdivision are more or less than the costs so allocated to such contractor under (2) above, the account of such contractor shall be credited or debited accordingly.

(e) **<Costs Incurred Prior to Date of Contract>** The District's allocated capital costs for the year 1962, pursuant to subdivision (c) of this article shall consist of the sum of the District's allocated capital costs for each year through December 31, 1962, and interest thereon, computed at the project interest rate and compounded annually.

(f)[48] **<Off-Aqueduct Power Facilities>** The capital costs of project aqueduct power recovery plants shall be charged and allocated in accordance with this Article 24. The capital costs of off-aqueduct power facilities shall be charged and allocated in accordance with Article 25(d).

(g)[49] **<Recovery of Water System Revenue Bond Financing Costs>** Notwithstanding provisions of Article 24 (a) through (d), the capital cost component of the Transportation Charge shall include an annual charge to recover the District's share of the transportation portion of the water system revenue bond financing costs. Charges to the District for these costs shall be calculated in accordance with the provisions of Article 50 of this contract. Charges for the transportation portion of the water system revenue bond financing costs shall not be affected by any reductions in payments pursuant to Article 51.

25. <u>Transportation Charge - Minimum Operation, Maintenance, Power, and Replacement Component</u>.

(a) **<Method of Computation>** The minimum operation, maintenance, power, and replacement component of the Transportation Charge shall return to the State those costs of the project transportation facilities necessary to deliver water to the contractor which constitute operation, maintenance, power, and replacement costs incurred irrespective of the amount of project water delivered to the contractor and which are allocated to the contractor pursuant to (b) below: *Provided*, That to the extent permitted by law, the State may establish reserve funds to meet anticipated minimum replacement costs; and deposits in such reserve funds by the State: (1) shall be made in such amounts that such reserve funds will be adequate to meet such anticipated costs as they are incurred, and (2) shall be deemed to be a part of the minimum replacement costs for the year in which such deposits are made.

(b) **<Allocation of Costs>** The total projected minimum operation, maintenance, power, and replacement costs of each aqueduct reach of the project transportation facilities for the respective year shall be allocated among all contractors entitled to delivery of project water

48 Amended: Amendment No. 18
49 Amended: Amendments No. 19 and 22

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from said facilities by the proportionate use of facilities method of cost allocation, in the same manner and upon the same bases as are set forth for the allocation of capital costs in Article 24: *Provided*, That such minimum operation, maintenance, power, and replacement costs as are incurred generally for the project transportation facilities first shall be allocated to each aqueduct reach in an amount which bears the same proportion to the total amount of such general costs that the amount of the costs incurred directly for the reach bears to the total of all direct costs for all aqueduct reaches.

(c) **<Payment Table>** The amount to be paid each year by the District under the minimum operation, maintenance, power, and replacement component of the Transportation Charge shall be determined in accordance with subdivision (b) of this article on the basis of the relevant values to be set forth for the respective aqueduct reaches in Table B, included in Article 24: *Provided*, That these values shall be subject to redetermination by the State in accordance with Article 28. Such amounts and any interest thereon shall be set forth by the State in Table E as soon as designs and cost estimates have been prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): *Provided*, That the amounts set forth in Table E shall be subject to redetermination by the State in accordance with Article 28.

<PLACEHOLDER: TABLE E WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE E PUBLISHED AS TABLE B-16A IN BULLETIN 132>

(d)[50] **<Off-Aqueduct Power Facilities>** Notwithstanding the provisions of subdivisions (a) and (b) of this article, or of Article 1(x), the costs of off-aqueduct power facilities shall be determined and allocated as follows:

(1) The off-aqueduct power costs shall include all annual costs the State incurs for any off-aqueduct power facility, which shall include, but not be limited to, power purchases, any annual principal and interest payments on funds borrowed by or advanced to the State, annual principal and interest on bonds issued by the State or other agency, or under revenue bond financing contracts, any requirements for coverage, deposits to reserves, and associated operation and maintenance costs of such facility, less any credits, interest earnings, or other monies received by the State in connection with such facility. In the event the State finances all or any part of an off-aqueduct power facility directly from funds other than bonds or borrowed funds, in lieu of such annual principal and interest payments, the repayment of capital costs as to that part financed by such other funds shall be determined on the basis of the schedule that would have been required under Article 24.

(2) The annual costs of off-aqueduct power facilities as computed in (1) above shall initially be allocated among contractors in amounts which bear the same proportions to the total amount of such power costs that the total estimated electrical energy (kilowatt hours) required to pump through project transportation facilities the desired delivery amounts of annual entitlements for that year, as submitted pursuant to Article 12(a)(1) and as may be modified by the State pursuant to Article 12(a)(2), bears to the total

50 Amended: Amendment No. 18

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estimated electrical energy (kilowatt hours) required to pump all such amounts for all contractors through project transportation facilities for that year, all as determined by the State.

(3) [51]An interim adjustment in the allocation of the power costs calculated in accordance with (2) above, may be made in May of each year based on April revisions in approved schedules of deliveries of project and nonproject water for contractors for such year. A further adjustment shall be made in the following year based on actual deliveries of project and nonproject water for contractors provided, however, in the event no deliveries are made through a pumping plant, the adjustments shall not be made for that year at that plant.

(4) To the extent the monies received or to be received by the State from all contractors for off-aqueduct power costs in any year are determined by the State to be less than the amount required to pay the off-aqueduct power costs in such year, the State may allocate and charge that amount of off-aqueduct power costs to the District and other contractors in the same manner as costs under the capital cost component of the Transportation Charge are allocated and charged. After that amount has been so allocated, charged and collected, the State shall provide a reallocation of the amounts allocated pursuant to this paragraph (4), such reallocation to be based on the allocations made pursuant to (2) and (3) above for that year, or in the event no such allocation was made for that year, on the last previous allocation made pursuant to (2) and (3) above. Any such reallocation shall include appropriate interest at the project interest rate.

(e)[52] **<No Subtitle>** The total minimum operation, maintenance, power and replacement component due that year from each contractor shall be the sum of the allocations made under the proportionate use of facilities method provided in subdivision (b) of this article and the allocations made pursuant to subdivision (d) of this article for each contractor.

26. <u>Transportation Charge - Variable Operation, Maintenance, Power, and Replacement Component</u>.

(a) **<Method of Computation>** The variable operation, maintenance, power, and replacement component of the Transportation Charge shall return to the State those costs of the project transportation facilities necessary to deliver water to the contractor which constitute operation, maintenance, power and replacement costs incurred in an amount which is dependent upon and varies with the amount of project water delivered to the contractor and which are allocated to the contractor pursuant to (1) and (2) below: *Provided*, That to the extent permitted by law, the State may establish reserve funds to meet anticipated variable replacement costs; and deposits in such reserve funds by the State: (1) shall be made in such amounts that such reserve funds will be adequate to meet such anticipated costs as they are incurred, and (2) shall be deemed to be a part of the variable replacement costs for the year in which such deposits are made. The amount of this component shall be determined as follows:

(1) There shall be computed for each aqueduct reach of the project transportation facilities a charge per acre-foot of water which will return to the State the

51 Amended: Amendment No. 22
52 Amended: Amendment No. 18

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total projected variable operation, maintenance, power, and replacement costs of the reach for the respective year. This computation shall be made by dividing said total by the number of acre-feet of project water estimated to be delivered from or through the reach to all contractors during the year.

(2) The amount of the variable component shall be the product of the sum of the charges per acre-foot of water, determined under (1) above, for each aqueduct reach necessary to deliver water to the contractor, and the number of acre-feet of project water delivered to the contractor during the year: *Provided*, That when project water has been requested by a contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the contractor to accept delivery thereof, the amount of said variable component to be paid by such contractor during such period shall be the product of the above sum and the sum of the number of acre-feet of project water delivered to the contractor and the number of acre-feet wasted.

(b) <Revenue from Aqueduct Power Recovery Plants> There shall be credited against the amount of the variable component to be paid by each contractor, as determined pursuant to subdivision (a) of this article, a portion of the projected net value of any power recovered during the respective year at project aqueduct power recovery plants located upstream on the particular aqueduct from the delivery structures for delivery of project water to the contractor. Such portion shall be in an amount which bears the same proportion to said projected net value that the number of acre-feet of project water delivered to the contractor through said plants during the year bears to the number of acre-feet of project water delivered to all contractors through said plants during the year.

(c) <Payment Table> The amount to be paid each year by the District under the variable operation, maintenance, power, and replacement component of the Transportation Charge shall be determined in accordance with subdivision (a) of this article for the respective aqueduct reaches in Table B, included in Article 24. Such amounts and any interest thereon shall be set forth by the State in Table F as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): *Provided*, That the amounts set forth in Table F shall be subject to redetermination by the State in accordance with Article 28.

<PLACEHOLDER: TABLE F WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE F PUBLISHED AS TABLE B-18 IN BULLETIN 132>

27. <u>Transportation Charge - Payment Schedule</u>. The amounts to be paid by the District for each year of the project repayment period under the capital cost and minimum operation, maintenance, power, and replacement components of the Transportation Charge, and under the variable operation, maintenance, power, and replacement component of said charge on the basis of then estimated deliveries, shall be set forth by the State in Table G as soon as designs and cost estimates have been prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a), which Table G shall constitute

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a summation of Tables D, E, and F: *Provided*, That each of the amounts set forth in Table G shall be subject to redetermination by the State in accordance with Article 28: *Provided further*, That the principles and procedures set forth in Articles 24, 25, and 26 shall be controlling as to such amounts. Such amounts shall be paid by the District in accordance with the provisions of Article 29.

<PLACEHOLDER: TABLE G WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE G PUBLISHED AS TABLE B-19 IN BULLETIN 132>

28.[53] Transportation Charge - Redetermination.

(a) Determinative Factors Subject to Retroactive Charge

The State shall redetermine the values and amounts set forth in Tables B, C, D, E, F, and G of this contract in the year following the year in which the State commences construction of the project transportation facilities and each year thereafter in order that the Transportation Charge to the District and the components thereof may accurately reflect the increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State incurred to construct the project transportation facilities described in Table I of this contract, annual entitlements, estimated deliveries, project interest rate, and all other factors which are determinative of such charges. In addition, each such redetermination shall include an adjustment of the components of the Transportation Charge to be paid by the District for succeeding years which shall account for the differences, if any, between those factors used by the State in determining the amounts of such components for all preceding years and the factors as then currently known by the State. Such adjustment shall be computed by the State and paid by the District or credited to the District's account in the manner described in (b) and (c) below.

(b) Adjustment: Transportation Charge - Capital Cost Component

Adjustments for prior underpayments or overpayments of the capital cost component of the Transportation Charge to the District, together with accrued interest charges or credits thereon computed at the then current project interest rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination, shall be paid in the year following the redetermination: *Provided*, That the District may elect to exercise the option whereby when the redetermined Transportation Charge for the following year, with adjustments, including adjustments of the operation, maintenance, power, and replacement components provided for in subdivision (c) of this article, is more or less than the last estimate of the Charge provided pursuant to Article 27 for the corresponding year, without adjustments, an amount equal to the total of such difference shall be deducted from or added to the adjusted capital cost component for that year and paid or credited in accordance with the following schedule:

53 Amended: Amendment 13

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Percent that Transportation Charge differs from last estimate (+ or -)	Period, in years, for amortizing the difference in indicated charge
for 10% or less	no amortization
more than 10%, but not more than 20%	2
more than 20%, but not more than 30%	3
more than 30%, but not more than 40%	4
more than 40%.	5

Such payments or credits shall be in equal semi-annual amounts of principal and interest on or before the 1st day of January and the 1st day of July, with interest computed at the project interest rate and compounded annually, during varying amortization periods as set forth in the preceding schedule: *Provided*, That for the purpose of determining the above differences in the Transportation Charge, the variable operation, maintenance, power, and replacement component shall be computed on the basis of the same estimated project water deliveries as was assumed in computing pursuant to Article 26(c).

(c) <u>Adjustment: Transportation Charge - Minimum and Variable Components</u>

One-twelfth of the adjustments for prior underpayments or overpayments of the District's minimum and variable operation, power, and replacement components for each year shall be added or credited to the corresponding components to be paid in the corresponding month of the year following the redetermination, together with accrued interest charges or credits thereon computed at the then current project interest rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination.

(d) <u>Exercise of Option</u>

The option provided for in subdivision (b) above shall be exercised in writing on or before the January 1 due date of the first payment of the capital cost component of the Transportation Charge for the year in which the option is to become effective.

Such option, once having been exercised, shall be applicable for all of the remaining years of the project repayment period.

(e)[54] **<No Subtitle>** Notwithstanding the provisions of Article 28(b), adjustments for prior overpayments and underpayments shall be repaid beginning in the year following the redetermination by application of a unit rate per acre-foot which, when paid for the projected portion of the District's annual entitlement will return to the State, during the project repayment period, together with interest thereon computed at the project interest rate and compounded annually, the full amount of the adjustments resulting from financing after January 1, 1987, from all bonds, advances, or loans listed in Article 1(w) except for Article 1(w)(3) and except for bonds issued by the State under the Central Valley Project Act after January 1, 1987 for facilities not listed among the water system facilities in Article 1(hh). Notwithstanding the immediately preceding exception, such amortization shall also apply to any adjustments in this component

54 Amended: Amendment No. 19

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charge resulting from a change in the project interest rate due to any refunding after January 1, 1986 of bonds issued under the Central Valley Project Act. However, amortization of adjustments resulting from items 1(w)(4) through (7) shall be limited to a period which would allow the Department to repay the debt service on a current basis until such time as bonds are issued to reimburse the source of such funding. In no event shall this amortization period be greater than the project repayment period.

(f)[55] <u>Adjustment: Water System Revenue Bond Financing Costs</u>

The use of water system revenue bonds for financing facilities listed in Article 1(hh) would result in adjustments for prior underpayments or overpayments of the capital cost component of the Transportation Charge to the District under the provisions of this article; however, in place of making such adjustments, charges to the District will be governed by Article 50.

29. <u>Time and Method of Payment</u>.

(a) <Bureau Water Charge> Payments by the District under the Bureau Water Charge shall commence in the year when Bureau water is first made available for delivery to the District pursuant to Article 6(b).

(b) <Initial Payment - Delta Water Charge> Payments by the District under the Delta Water Charge shall commence in the year of initial project water delivery to the District.

(c) <Initial Payment - Transportation Charge: Capital Component> Payments by the District under the capital cost component of the Transportation Charge shall commence in 1963.

(d) <Initial Payment - Transportation Charge: Minimum Component> Payments by the District under the minimum operation, maintenance, power, and replacement component of the Transportation Charge shall commence for each aqueduct reach in the year following the year in which construction of that reach is completed, or in the year of initial water delivery, whichever is earlier.

(e) <Initial Payment - Transportation Charge: Variable Component> Payments by the District under the variable operation, maintenance, power, and replacement component of the Transportation Charge shall commence in the year of initial water delivery to the District.

(f) <Statement of Charges> The State shall, on or before July 1 of each year, commencing with the year preceding the year in which payment of the respective charge is to commence pursuant to this article, furnish the District with a written statement of: (1) The Bureau Water Charge to the District for the next succeeding Bureau water year; (2) the charges to the District for the next succeeding year under the capital cost and minimum operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge; (3) the unit charges to the District for the next succeeding year under the variable operation, maintenance, power, and replacement components of said Delta Water Charge and Transportation Charge; and (4) the total charges to the District for the preceding year under the variable operation, maintenance, power, and replacement components of said Delta Water

55 Amended: Amendment No. 19

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Charge and Transportation Charge: *Provided*, That through December 31, 1969, the Delta Water Charge shall be based upon a unit rate of $3.50 per acre-foot and shall be paid by the contractors on the basis of their respective annual entitlements to project water, as provided in Article 22(b): *Provided Further*, that the first such statement shall be provided by the State as soon after the execution of this contract as is feasible. All such statements shall be accompanied by the latest revised copies of the document amendatory to Article 22 and of the tables included in Articles 24 through 27 of this contract, together with such other data and computations used by the State in determining the amounts of the above charges as the State deems appropriate. The State shall, on or before the fifteenth day of each month of each year, commencing with the year of initial water delivery to the District, furnish the District with a statement of the charges to the District for the preceding month under the variable operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge. Such charges shall be determined by the State in accordance with the relevant provisions of Articles 22 and 26 of this contract, upon the basis of metered deliveries of project water to the District, except as otherwise provided in those articles.

(g)[56] **<Timing of Payment – Bureau Water Charge>** The District shall pay to the State, on or before February 1 of each year, commencing as provided in subdivision (a) of this article, one-half (1/2) of the Bureau Water Charge to the District for the Bureau water year as stated pursuant to subdivision (f) of this article, and shall pay the remainder of said charge prior to the time that the amount of Bureau water made available for delivery to the District under its water delivery schedule for that l2-month period, established pursuant to Article 12, equals the amount for which payment has been made, but in any event not later than June l of that year.

(h) **<Timing of Payment - Capital Components>** The District shall pay to the State, on or before January 1 of each year, commencing with the year in which payment of the respective charge is to commence pursuant to this article, one-half (1/2) of the charge to the District for the year under the capital cost component of the Delta Water Charge and one-half (1/2) of the charge to the District for the year under the capital cost component of the Transportation Charge, as such charges are stated pursuant to subdivision (f) of this article; and shall pay the remaining one-half (1/2) of each of said charges on or before July 1 of that year.

(i) **<Timing of Payment - Minimum Components>** The District shall pay to the State, on or before the first day of each month of each year, commencing with the year of initial water delivery to the District, one-twelfth (1/12) of the sum of the charges to the District for the year under the minimum operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge, respectively, as such charges are stated pursuant to subdivision (f) of this article.

(j) **<Timing of Payment - Variable Components>** The District shall pay to the State on or before the fifteenth day of each month of each year, commencing with the year of initial water delivery to the District, the charges to the District under the variable operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge, respectively, for which a statement was received by the District during the preceding month pursuant to subdivision (f) of this article, as such charges are stated in such statement.

56 Amended: Amendment No. 1

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(k) **<Contest of Accuracy of Charges>** In the event that the District in good faith contests the accuracy of any statement submitted to it pursuant to subdivision (f) of this article, it shall give the State notice thereof at least ten (10) days prior to the day upon which payment of the stated amounts is due. To the extent that the State finds the District's contentions regarding the statement to be correct, it shall revise the statement accordingly, and the District shall make payment of the revised amounts on or before the due date. To the extent that the State does not find the District's contentions to be correct, or where time is not available for a review of such contentions prior to the due date, the District shall make payment of the stated amounts on or before the due date, but may make the contested part of such payment under protest and seek to recover the amount thereof from the State.

<30.[57] Surcharge for Project Water Used on Excess Land - Deleted>

31. **Adjustment for Overpayment or Underpayment.** If in any year, by reason of errors in computation or other causes, there is an overpayment or underpayment to the State by the District of the charges provided for herein, which overpayment or underpayment is not accounted for and corrected in the annual redetermination of said charges, the amount of such overpayment or underpayment shall be credited or debited, as the case may be, to the District's account for the next succeeding year and the State shall notify the District thereof in writing.

32. **Delinquency in Payment.**

(a) **<District to Provide for Punctual Payment>** The governing body of the District shall provide for the punctual payment to the State of payments which become due under this contract.

(b)[58] **<Interest on Overdue Payments>** Upon every amount of money required to be paid by the District to the State pursuant to this contract which remains unpaid after it becomes due and payable, interest shall accrue at an annual rate equal to that earned by the Pooled Money Investment Fund, as provided in Government Code Sections 16480, et seq. calculated monthly on the amount of such delinquent payment from and after the due date until it is paid, and the District hereby agrees to pay such interest: *provided*, that no interest shall be charged to or be paid by the District unless such delinquency continues for more than thirty (30) days.

33. **Obligation of District to Make Payments.**

(a) **<Refusal of Water Does Not Affect Obligation>** The District's failure or refusal to accept delivery of project water to which it is entitled under Article 6(c) shall in no way relieve the District of its obligation to make payments to the State as provided for in this contract. The State, however, shall make reasonable efforts to dispose of any water made available to but not required by the District, and any net revenues from such disposal shall be credited to the District's account hereunder.

(b) **<Character of Obligation>** The District as a whole is obligated to pay to the State the payments becoming due under this contract, notwithstanding any individual default by

57 Amended: Amendments No. 5, 7, 11, and 12
58 Amended: Amendment No. 18

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its constituents or others in the payment to the District of assessments, tolls, or other charges levied by the District.

34. <u>Obligation of District to Levy Taxes and Assessments</u>.

(a) <When Obligated> If in any year the District fails or is unable to raise sufficient funds by other means, the governing body of the District shall upon written notice from the State levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year.

(b)[59] <Enforcement by Officers of District> Taxes or assessments levied by the governing body of the District pursuant to subdivision (a) of this article shall be enforced and collected by all officers of the District charged with the duty of enforcing and collecting taxes or assessments levied by the District.

(c) <Deposit in Separate Fund> All money collected for taxes or assessments under this article shall be kept in a separate fund by the treasurer or other officer of the District charged with the safekeeping and disbursement of funds of the District, and, upon the written demand of the State, the treasurer or other officer shall pay over to the State all such money in his possession or control then due the State under this contract, which money shall be applied by the State to the satisfaction of the amount due under this contract.

(d) <Enforcement of Levy> In the event of failure, neglect, or refusal of any officer of the District to levy any tax or assessment necessary to provide payment by the District under this contract, to enforce or to collect the tax or assessment, or to pay over to the State any money then due the State collected on the tax or assessment, the State may take such action in a court of competent jurisdiction as it deems necessary to compel the performance in their proper sequence of all such duties. Action taken pursuant hereto shall not deprive the State of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

D. GENERAL PROVISIONS

35. <u>Remedies Not Exclusive</u>. The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

36. <u>Amendments</u>. This contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law. The State shall promptly furnish the District with copies of all other contracts now or hereafter executed by the State for a dependable supply of project water, and of any amendments thereof.

59 Amended: Amendment No. 1

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37. Reservation With Respect to State Laws. Nothing herein contained shall be construed as estopping or otherwise preventing the District or any person, firm, association, corporation, or public body or agency claiming by, through, or under the District from contesting by litigation or other lawful means the validity, constitutionality, construction or application of any law of this State, including laws referred to in the Bond Act, or as preventing or prejudicing the amendment or repeal of any such law, and each contract executed by the State for a dependable supply of project water shall contain a similar reservation with respect to State laws.

38. Opinions and Determinations. Where the terms of this contract provide for action to be based upon the opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

39. Contracting Officer of the State. The contracting officer of the State shall be the Director of Water Resources of the State of California and his successors, or their duly authorized representatives. The contracting officer shall be responsible for all discretionary acts, opinions, judgments, approvals, reviews, and determinations required of the State under the terms of this contract.

40. Successors and Assigns Obligated. This contract and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

41. Assignment. No assignment or transfer of this contract or any part hereof, rights hereunder, or interest herein by the District shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose. No assignment or transfer of this contract or any part hereof, rights hereunder, or interest herein by the State shall be valid except as such assignment or transfer is made pursuant to and in conformity with applicable law.

42. Waiver of Rights. Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to other default or matter.

43. Notices. All notices that are required either expressly or by implication to be given by one party to the other under this contract shall be signed for the State by its contracting officer, and for the District by its General Manager and his successors or their duly authorized representatives. All such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed envelope and deposited in a United State Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, the District shall address all notices to the State as follows: <Address no longer valid and not included here> and the State shall address all notices to the District as follows: <Address no longer valid and not included here>.

44. Maintenance and Inspection of Books, Records, and Reports.

(a) <Rights by District and State> During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies

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of any books, records, or reports of the other party pertaining to this contract or matters related hereto. Each of the parties hereto shall maintain and make available for such inspection accurate records of all of its costs, disbursements and receipts with respect to its activities under this contract and the Bond Act.

(b) **<District Reports for Bureau Water>** The district shall furnish to the Bureau of Reclamation a report on crops raised and agricultural and livestock products produced on the land within the district. This report shall be furnished to the Regional Director, Region 2, Bureau of Reclamation, Sacramento, annually on or before December 31 for each year in which Bureau water is received, and a copy shall be provided to the State.

45. **<Contracts to be Uniform>**

(a) **<South Bay Aqueduct Contracts>** Contracts executed by the State for a dependable supply of project water from the South Bay Aqueduct shall be substantially uniform with respect to basic terms and conditions.

(b) **<Project Contracts>** Contracts executed by the State for a dependable supply of project water shall be in substantial conformity with the provisions of the water supply contract between the State and The Metropolitan Water District of Southern California dated November 4, 1960, except as variations are permitted by Article 45 of that contract.

46. **Suit on Contract.** Each of the parties hereto may sue and be sued with respect to this contract.

47. [60]**Amendatory Provisions.**

<(a)[61] Surplus Water – Deleted>

<(b)[62] Surcharge Credit – Deleted>

(c)[63] Turnouts and Measuring Devices

(1) Notwithstanding the provisions of Article 10(d), any delivery structure requested by the District, if in the opinion of the State the construction of the structure will not interfere with or adversely affect any project facilities or the construction or operation thereof, may be designed and constructed by the District subject to the prior written approval by the State of plans and specifications for such structure and subject to construction supervision by the State: *Provided*, that the District shall pay all design and other costs incurred by the State which in the opinion of the State are properly chargeable to any such turnout designed and constructed by the District: *Provided, further*, that the provisions of Article 10(d) shall apply to all delivery structures constructed by the State.

(2) Notwithstanding the provisions of Article 11, measuring devices and equipment to be installed in any delivery structure constructed by the District, pursuant to subdivision (c)(1) of this Article, may be acquired and installed by the District but shall

60 Added: Amendment 1
61 Deleted: Amendment 14
62 Deleted: Amendment 12
63 Amended: Amendment No. 3

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be maintained and operated by the State: *Provided*, that such measuring devices and equipment as may be acquired and installed by the District shall be satisfactory and acceptable to the State, and shall be installed under the supervision of the State: *Provided, further*, that such devices and equipment shall be examined, tested and serviced regularly by the State to insure their accuracy, and that at any time or times the District or any other contractor may inspect such devices and equipment, and the measurements and records taken therefrom: *Provided, further*, that the provisions of Article 11 shall apply to all measuring devices and equipment acquired and installed by the State.

(d)[64] Del Valle Branch Capacity

Notwithstanding the provisions of Article 24 (b), the capacity provided in the Del Valle Branch of the South Bay Aqueduct for the transport and delivery of project water to the District shall be 9,536 acre-feet, exclusive of the allocated share of capacity to compensate for operational losses, and that such capacity shall be used to determine all appropriate charges pursuant to this contract.

<48. No such Article exists.>

<49. No such Articlexists.>

50. [65]<u>Water System Revenue Bond Financing Costs</u>.

(a) <Cost Provisions> Charges to the District for water system revenue bond financing costs shall be governed by provisions of this article. Charges to all contractors for water system revenue bond financing costs shall return to the State an amount equal to the annual financing costs the State incurs in that year for water system revenue bonds (including water system revenue bond anticipation notes). Annual financing costs shall include, but not be limited to, any annual principal and interest on water system revenue bonds plus any additional requirements for bond debt service coverage, deposits to reserves, and annual premiums for insurance or other security obtained pursuant to subdivision (f) of this article. The State shall provide credits to the contractors for excess reserve funds, excess debt service coverage, interest, and other earnings of the State in connection with repayment of such revenue bond financing costs, when and as permitted by the bond resolution. When such credits are determined by the State to be available, such credits shall be promptly provided to the contractors and shall be in proportion to the payments under this article from each contractor. Reserves, bond debt service coverage, interest, and other earnings may be used in the last year to retire the bonds.

(b) <Annual Charges> Annual charges to recover water system revenue bond financing costs shall consist of two elements.

(1) The first element shall be an annual charge to the District for repayment of capital costs of water system facilities as determined under Articles 22 and 24 of this contract with interest at the project interest rate. For conservation facilities, the charge shall be a part of the capital cost component of the Delta Water Charge in accordance

64 Amended: Amendment No. 9
65 Added: Amendment 20

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with Article 22. For transportation facilities, the charge shall be a part of the capital cost component of the Transportation Charge in accordance with Article 24.

(2) The second element shall be the District's share of a Water System Revenue Bond Surcharge to be paid in lieu of a project interest rate adjustment. The total annual amount to be paid by all contractors under this element shall be the difference between the total annual charges under the first element and the annual financing costs of the water system revenue bonds. The amount to be paid by each contractor shall be calculated annually as if the project interest rate were increased to the extent necessary to produce revenues from all contractors sufficient to pay such difference for that year. In making that calculation, adjustments in the District's Transportation capital cost component charges for prior overpayments and underpayments shall be determined as if amortized over the remaining years of the project repayment period.

(c) **<District Invoice>** The Water System Revenue Bond Surcharge will be identified by component and charge in the District's invoice.

(d) **Timing of Payments**. Payments shall be made in accordance with Article 29(f) of this contract.

(e) **Reduction in Charges**. The Water System Revenue Bond Surcharge under Article 50(b)(2) shall cease for each series of water system revenue bonds when that series is fully repaid. However, the annual charge determined pursuant to Article 50(b)(1) shall continue to be collected for the time periods otherwise required under Articles 22 and 24.

After the Department has repaid the California Water Fund in full and after each series of Water System Revenue Bonds is repaid, the Department will reduce the charges to all contractors in an equitable manner in a total amount that equals the amount of the charges under Article 50(b)(1) that the Department determines is not needed for future financing of facilities of the System which, in whole or in part, will serve the purposes of the water supply contract with the District.

(f) **<Default Protection>** To the extent economically feasible and justifiable, as determined by the State after consultation with contractors, the State shall maintain insurance or other forms of security protecting bondholders and non-defaulting contractors against costs resulting from the failure of any contractor to make the payments required by this article.

(g) **<Bond Issuing Process>** Before issuing each series of water system revenue bonds, the State shall consult with the contractors, prepare a plan for the State's future financing of water system facilities, and give the District an opportunity to comment on the plan. The plan shall include but not be limited to the size of any water system revenue bond issuances and the form of any necessary resolutions or supplements.

(h) **Defaults.**

(1) If a contractor defaults partially or entirely on its payment obligations calculated under this article and sufficient insurance or other security protecting the non-defaulting contractors is not provided under Article 50(f), the State shall allocate a portion of the default to each non-defaulting contractor. The District's share of the default shall be equal to an amount determined by multiplying the total default amount to be

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charged to all non-defaulting contractors by the ratio that the District's maximum Table A entitlement bears to the maximum Table A entitlements of all non-defaulting contractors. However, such amount shall not exceed in any year 25 percent of the Water System Revenue Bond financing costs that are otherwise payable by the District in that year. The amount of default to be charged to non-defaulting contractors shall be reduced by any receipts from insurance protecting non-defaulting contractors and bond debt service coverage from a prior year and available for such purpose.

(2) If a contractor defaults partially or entirely on its payment obligations under this article, the State shall also pursuant to Article 20, upon six months' notice to the defaulting contractor, suspend water deliveries under Article 20 to the defaulting contractor so long as the default continues. The suspension of water deliveries shall be proportional to the ratio of the default to the total water system revenue bond payments due from the defaulting contractor. However, the State may reduce, eliminate, or not commence suspension of deliveries pursuant to this subparagraph if it determines suspension in the amounts otherwise required is likely to impair the defaulting contractor's ability to avoid further defaults or that there would be insufficient water for human consumption, sanitation, and fire protection. The State may distribute the suspended water to the non-defaulting contractors on terms it determines to be equitable.

(3) During the period of default, credits otherwise due the defaulting contractor shall be applied to payments due from the defaulting contractor.

(4) Except as otherwise provided in Article 50(h)(3), the defaulting contractor shall repay the entire amount of the default to the State with interest compounded annually at the Surplus Money Investment Fund rate before water deliveries that had been suspended shall be fully resumed to that contractor. If the defaulting contractor makes a partial repayment of its default, the Department may provide a proportional restoration of suspended deliveries. The amount of the default to be repaid shall include any amounts previously received by the State from insurance proceeds, bond debt service coverage, or other reserves, and payments from other contractors pursuant to this subparagraph (h). The defaulting contractor shall not be entitled to any make-up water deliveries as compensation for any water deliveries suspended during the period when the contractor was in default.

(5) At such time as the default amount is repaid by the defaulting contractor, the non-defaulting contractors shall receive credits in proportion to their contributions towards the amount of the default with interest collected by the State on the defaulted amount.

(6) In the event there is an increase in the amount a non-defaulting contractor contributes to reserves and/or bond debt service coverage, such increase shall be handled in the same manner as provided in Article 50(a).

(7) Action taken pursuant to this subarticle shall not deprive the State of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

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(i) Power of Termination.

(1) The Department and the District agree to negotiate in good faith the development of a means to provide adequate protection for the Department's cash flow into priorities one and two for revenues under Water Code Section 12937(b) with the goal of obtaining agreement by April 1, 1987. The Department and the District agree to continue negotiations beyond April 1, 1987 if necessary to meet their common goal of arriving at agreement.

(2) If such an agreement has not been reached by April 1, 1987, and if the Director of Water Resources determines that adequate progress has not been made toward such an agreement, the Director may give notice to the District and other contractors that he intends to exercise the power to terminate provided in this subarticle 50(i). The Director's authority to give such a notice shall terminate on July 1, 1988.

(3) After six months from the date of issuing the notice of intent to terminate, but in no event later than January 1, 1989, the Director may terminate the authority of the Department to issue additional series of water system revenue bonds using the repayment provisions of Article 50. The Department shall promptly notify the District and other contractors that the Director has exercised the power of termination.

(4) No additional series of water system revenue bonds shall be issued under the provisions of this Article 50 after the Director has exercised the power to terminate, but Article 50 shall remain in effect as to any series of water system revenue bonds issued prior to the time the Director exercises the power to terminate.

(5) An exercise of the power to terminate provided in this subarticle 50(i) shall also rescind any changes made by this amendment in the schedule of payment of overpayment or underpayment of capital costs resulting from a change in the project interest rate and shall also rescind the addition of item (7) to Article 1(w). However, if the Department has borrowed any funds under Article 1(w)(7), Article 1(w)(7) shall remain in effect as to that and only that borrowing. Upon the exercising of the power to terminate, subarticles 28(e) and (f) shall be rescinded and Article 1(w) shall read as it previously read as shown on Attachment Number 1 to this amendment. <Attachment 1 is included at the end of this contract.>

(6) At any time before January 1, 1989, so long as the Director has not already exercised the power of termination, the Director may irrevocably waive his right to exercise the power of termination or may rescind any previously issued notice of intention to terminate.

(7) If the Director does not exercise the power of termination before January 1, 1989, this Subarticle 50(i) shall expire, and the remainder of this Article 50 shall remain in effect. Changes made by this amendment to other articles shall also remain in effect.

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(j)[66] **<Payments Unaffected by Article 51>** Amounts payable under this article shall not be affected by any reductions in payments pursuant to Article 51.

51.[67] FINANCIAL ADJUSTMENTS

(a) General Operating Account

(1) The State shall maintain a General Operating Account to provide the moneys needed to pay obligations incurred by the State of the types described in Water Code sections 12937(b)(1) and (2) in the event of emergency or cash flow shortages.

(2) An initial deposit of $15 million shall be made available from revenue bond reserves that are no longer required by revenue bond covenants and that would otherwise be credited to the contractors including the District. In 1998 or when the funds become available an additional $7.7 million will be deposited in the General Operating Account from revenue bond reserves that are no longer required by revenue bond covenants and that would otherwise be credited to the contractors including the District, bringing the deposits to that account under this article to $22.7 million.

(3) The balance in the General Operating Account will increase pursuant to subdivision (e)(3)(v) of this article to an amount determined by the State but not in excess of $32 million. However, after the year 2001, the maximum amount of the fund may increase or decrease annually by not more than the same percentage as the increase or decrease in the charges, other than power charges for pumping water, to all the contractors for the previous year from the charges for the year before that for obligations under subdivisions (c)(2)(ii) and (iii) of this article.

(b) State Water Facilities Capital Account

(1) The State shall establish a State Water Facilities Capital Account to be funded from revenues available under Water Code section 12937(b)(4). Through procedures described in this article and as limited by this article, the State may consider as a revenue need under subdivision (c)(2)(v) of this article and may deposit in the State Water Facilities Capital Account the amounts necessary to pay capital costs of the State Water Facilities for which neither general obligation bond nor revenue bond proceeds are available, including but not limited to planning, reconnaissance and feasibility studies, the San Joaquin Valley Drainage Program and, through the year 2000, the CALFED Bay-Delta Program.

(2) The Director of the Department of Water Resources shall fully consult with the contractors and consider any advice given prior to depositing funds into this account for any purposes. Deposits into this account shall not exceed the amounts specified in subdivision (c)(2)(v) of this article plus any amounts determined pursuant to subdivision (e)(1)(iii) of this article.

(3) The State shall use revenue bonds or other sources of moneys rather than this account to finance the costs of construction of any major capital projects.

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66 Amended: Amendment No. 22
67 Amended: Amendment No. 22

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(c) Calculation of Financial Needs

(1) Each year the State shall calculate in accordance with the timing provisions of Articles 29 and 31 the amounts that would have been charged (but for this article) to each contractor as provided in other provisions of this contract.

(2) Each year the State shall also establish its revenue needs for the following year for the following purposes, subject to the following limitations:

(i) The amount required to be collected under the provisions of this contract, other than this article, with respect to all revenue bonds issued by the State for Project Facilities.

(ii) The amount required for payment of the reasonable costs of the annual maintenance and operation of the State Water Resources Development System and the replacement of any parts thereof as described in Water Code section 12937(b)(1). These costs shall not include operation and maintenance costs of any Federal Central Valley Project facilities constructed by the United States and acquired by the State of California after 1994, other than the State's share of the joint use facilities which include San Luis Reservoir, the San Luis Canal and related facilities.

(iii) The amount required for payment of the principal of and interest on the bonds issued pursuant to the Burns-Porter Act as described in Water Code section 12937(b)(2).

(iv) Any amount required for transfer to the California Water Fund in reimbursement as described in Water Code section 12937(b)(3) for funds utilized from said fund for construction of the State Water Resources Development System.

(v) For the years 1998 and thereafter, the amount needed for deposits into the State Water Facilities Capital Account as provided in subdivision (b) of this article, but (A) not more than $6 million per year for the years 1998, 1999 and 2000, and (B) not more than $4.5 million per year for the years 2001 and thereafter.

(3) Subject to the provisions of subdivision (e) of this article, the State shall reduce the annual charges in the aggregate for all contractors by the amounts by which the hypothetical charges calculated pursuant to subdivision (c)(1) above exceed the revenue needs determined pursuant to subdivision (c)(2) above. The reductions under this article shall be apportioned among the contractors as provided in subdivisions (d), (e), (f) and (g) of this article. Reductions to contractors shall be used to reduce the payments due from the contractors on each January 1 and July 1; *Provided*, however, that to the extent required pursuant to subdivision (h) of this article, each Agricultural Contractor shall pay to the Agricultural Rate Management Trust Fund an amount equal to the reduction allocated to such Agricultural Contractor. Any default in payment to the trust fund shall be subject to the same remedies as any default in payment to the State under this contract.

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(4) The State may submit a supplemental billing to the District for the year in an amount not to exceed the amount of the prior reductions for such year under this article if necessary to meet unanticipated costs for purposes identified in Water Code section 12937(b)(1) and (2) for which the State can issue billings under other provisions of this contract. Any supplemental billing made to the District for these purposes shall be in the same proportion to the total supplemental billings to all contractors for these purposes as the prior reduction in charges to the District in that year bears to the total reductions in charges to all contractors in that year and shall be treated as reducing the amount of the reduction made available for that year to the District by the amount of the supplemental bill to the District.

(5) The State may also submit a supplemental billing to the District for the year if necessary to meet unanticipated costs for revenue bond debt service and coverage for which the State can issue a statement of charges under provisions of this contract other than this article. The relative amounts of any supplemental billing made to the District and to other contractors for revenue bond purposes shall be governed by such other applicable provisions of this contract.

(6) Payment of any supplemental billing shall be due thirty days after the date of the invoice. Delinquency and interest on delinquent amounts due shall be governed by Article 32.

(d) Apportionment of Reductions between Agricultural and Urban Contractors

(1) Reductions available under this article are projected to begin to occur in 1997**.** The numbers and percentages in this subdivision reflect certain estimates of dollars and sharing of reductions. The actual reductions may vary slightly from the amounts described below. The State shall determine the availability of reductions for each year in accordance with this article.

(2) Reductions shall be phased in as follows:

(i) In 1997 reductions in the amount of $14 million are projected to be available and shall be applied as follows: the first $10 million of reductions shall be apportioned among the Agricultural Contractors, and the remaining reductions shall be apportioned among the Urban Contractors.

(ii) In 1998 reductions in the amount of $17 million are projected to be available and shall be applied as follows: the first $10 million of reductions shall be apportioned among the Agricultural Contractors, and the remaining reductions shall be apportioned among the Urban Contractors.

(iii) In 1999 reductions in the amount of $32 million are projected to be available and shall be applied as follows**:** the first $10 million of reductions shall be apportioned among the Agricultural Contractors, and the remaining reductions shall be apportioned among the Urban Contractors.

(iv) In 2000 reductions in the amount of $33 million are projected to be available and shall be applied as follows: the first $10 million of reductions shall

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be apportioned among the Agricultural Contractors, and the remaining reductions shall be apportioned among the Urban Contractors.

(3)

(i) In the event that the aggregate amount of reductions in any of the years 1997 through 2000 is less than the respective amount projected for such year in subdivision (d)(2) above, the shortfall shall be taken first from reductions that would have been provided to Urban Contractors. Only after all reductions to Urban Contractors have been eliminated in a given year shall the remaining shortfall be taken from reductions scheduled for Agricultural Contractors. Any projected reductions not made available due to such shortfalls in the years 1997 through 2000 shall be deferred with interest at the project interest rate to the earliest subsequent years when reductions in excess of those projected for those years are available. Such deferred reductions with interest at the project interest rate shall be applied to the charges of the contractors whose reductions have been deferred.

(ii) In the event that the aggregate amount of reductions available in any of the years 1997 through 2000 is greater than the sum of (A) the respective amount projected for such year in subdivision (d)(2) above, plus (B) the amount of any shortfall with accrued interest at the project interest rate, remaining from any prior year to be applied, the excess shall be applied for the purposes and in the amounts per year described in subdivisions (e)(3)(iii), (iv), (v) and (vi) of this article, in that order.

(4) In 2001 and in each succeeding year reductions equal to or in excess of $40.5 million are projected to be available and shall be applied as follows:

(i) If reductions are available in an amount that equals or exceeds $40.5 million, $10 million of reductions shall be apportioned among the Agricultural Contractors, and $30.5 million of reductions shall be apportioned among the Urban Contractors. If reductions are available in an amount greater than $40.5 million, the excess shall be applied as provided in subdivision (e)(3) of this article, subject however to subdivision (e)(1).

(ii) If reductions are available in an amount less than $40.5 million in any of these years, the reductions shall be divided on a 24.7% - 75.3% basis between the Agricultural Contractors and the Urban Contractors respectively. Any such reductions not made due to shortages shall be applied without interest in the next year in which reductions in an amount in excess of $40.5 million are available pursuant to subdivision (e)(3) of this article with any remainder that is not available carried over without interest to be applied in the earliest subsequent years when reductions in excess of $40.5 million are available.

(5) Annual charges to a contractor shall only be reduced prospectively from and after the date it executes the Monterey Amendment to this contract. Apportionments of reductions shall be calculated on the assumption that all contractors have executed such amendment.

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(e) Review of Financial Requirements

(1) In 2001 and every fifth year thereafter the Director of the Department of Water Resources, in full consultation with the contractors, will review the financial requirements of the State Water Resources Development System and determine the following:

(i) The amount of revenues that are needed for State Water Resources Development System purposes in addition to those needed for the purposes specified in subdivisions (c)(2)(i), (ii), (iii), and (iv) of this article;

(ii) If the aggregate amount that would have been charged to all contractors in any year but for this article exceeds the sum of (A) the amount of revenues needed for the purposes specified in subdivisions (c)(2)(i), (ii), (iii) and (iv), plus (B) $40.5 million, plus (C) the amount determined pursuant to subdivision (c)(2)(v) of this article, the amount of such excess.

(iii) The amount of the excess determined in subdivision (e)(1)(ii) above that should be collected by the State for additional State Water Resources Development System purposes and the amount of such excess that should be used for further annual charge reductions.

(2) After making the determinations required above, the State may collect the revenues for additional State Water Resources Development System purposes in the amount determined pursuant to subdivision (e)(1)(iii) above.

(3) If and to the extent that as a result of such determinations, the aggregate amount to be charged to contractors is to be reduced by more than $40.5 million per year, the following priorities and limitations shall apply with respect to the application of such additional reductions:

(i) First, reductions shall be allocated to make up shortfalls in reductions from those projected for the years 1997 through 2000 with interest at the project interest rate pursuant to subdivision (d)(3)(i).

(ii) Second, reductions shall be allocated to make up shortfalls in reductions from those projected for the years beginning with 2001 without interest pursuant to subdivision (d)(4)(ii).

(iii) Third, additional reductions in the amount of $2 million per year shall be apportioned among the Urban Contractors until a total of $19.3 million in such additional reductions have been so applied.

(iv) Fourth, reductions up to an additional $2 million per year shall be allocated to make up any shortfalls in the annual reductions provided for in subdivision (e)(3)(iii).

(v) Fifth, $2 million per year shall be charged and collected by the State and deposited in the General Operating Account to bring the account ultimately up to an amount determined by the State but not in excess of $32 million with adjustments as provided in subdivision (a) of this article. Any

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amount in the account in excess of this requirement shall be returned to general project revenues.

(vi) Sixth, remaining amounts if any shall be used for reductions divided on a 24.7% - 75.3% basis between the Agricultural Contractors and the Urban Contractors respectively.

(f) Apportionment of Reductions among Urban Contractors

Reductions in annual charges apportioned to Urban Contractors under subdivisions (d) and (e) of this article shall be further allocated among Urban Contractors pursuant to this subdivision. The amount of reduction of annual charges for each Urban Contractor shall be based on each Urban Contractor's proportionate share of total allocated capital costs as calculated below, for both project conservation and project transportation facilities, repaid by all Urban Contractors over the project repayment period.

(1) The conservation capital cost component of the reduction allocation shall be apportioned on the basis of maximum annual entitlement. Each Urban Contractor's proportionate share shall be the same as the percentage of that contractor's maximum annual entitlement to the total of all Urban Contractors' maximum annual entitlements.

(2) The transportation capital cost component of the reduction allocation shall be apportioned on the basis of transportation capital cost component repayment obligations, including interest over the project repayment period. Each Urban Contractor's proportionate share shall be the same as the percentage that the contractor's total transportation capital cost component repayment obligation is of the total of all Urban Contractors' transportation capital cost component repayment obligations.

(i) Recalculations shall be made annually through the year 1999. Beginning in the year 2000 recalculations shall be made every five years unless an Urban Contractor requests a recalculation for an interim year and does so by a request in writing delivered to the Department by January 1 of the year in which the recalculation is to take place.

(ii) The transportation capital cost component repayment obligations, for purposes of this Article 51(f), shall be based in the year of recalculation on the then most recent Department of Water Resources Bulletin 132, Table B-15, "Capital Cost Component of Transportation Charge for Each Contractor," or its equivalent, excluding any costs or entitlement associated with transfers of entitlement from Agricultural Contractors pursuant to Article 53.

(3) To reflect the relative proportion of the conservation capital cost component and the transportation capital cost component to the total of all capital cost repayment obligations, the two cost components shall be weighted as follows:

(i) The conservation capital cost component shall be weighted with a thirty percent (30%) factor. The weighting shall be accomplished by multiplying each Urban Contractor's percentage of maximum annual entitlements as calculated in subdivision (f)(1) of this article by thirty percent (30%).

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(ii) The transportation capital cost component shall be weighted with a seventy percent (70%) factor. The weighting shall be accomplished by multiplying each Urban Contractor's percentage of transportation capital cost component repayment obligations as calculated in subdivision (f)(2) of this article by seventy percent (70%).

(iii) A total, weighted capital cost percentage shall be calculated for each Urban Contractor by adding the weighted conservation capital cost component percentage to their weighted transportation capital cost component percentage.

(4) The total amount of the annual charges to be reduced to Urban Contractors in each year shall be allocated among them by multiplying the total amount of annual charges to be reduced to the Urban Contractors by the total, weighted capital cost percentages for each such contractor. If the amount of the reduction to an Urban Contractor is in excess of that contractor's payment obligation to the Department for that year, such excess shall be reallocated among the other Urban Contractors.

(5) In the case of a permanent transfer of urban entitlement, the proportionate share of annual charge reductions associated with that entitlement shall be transferred with the entitlement to the buying contractor. In the case of an entitlement transfer by either Santa Barbara County Flood Control and Water Conservation District or San Luis Obispo County Flood Control and Water Conservation District, the reductions in annual charges to that agency shall be allocated (a) on the basis of that entitlement being retained by that agency which bears Coastal Branch Phase II transportation costs, (b) on the basis of that entitlement being retained by that agency which does not bear Coastal Branch Phase II transportation costs, and (c) on the basis of the balance of that agency's entitlement which also does not bear Coastal Branch Phase II transportation costs.

(g) Apportionment of Reductions Among Agricultural Contractors

(1) Reductions in annual charges apportioned to Agricultural Contractors under subdivisions (d) and (e) of this article shall be allocated among the Agricultural Contractors pursuant to this subdivision. The amount of reduction of annual charges for each Agricultural Contractor for the years 1997 through 2001 shall be based on each Agricultural Contractor's estimated proportionate share of the total project costs, excluding the variable operation, maintenance, power and replacement components of the Delta Water Charge and the Transportation Charge and also excluding off-aqueduct power charges, to be paid by all Agricultural Contractors for the years 1997 through 2035, calculated without taking into account this article. For purposes of these calculations, Kern County Water Agency's and Dudley Ridge Water District's estimated project costs shall not include any costs associated with the 45,000 acre-feet of annual entitlement being relinquished by those contractors pursuant to subdivision (i) of Article 53. Also, for purposes of these calculations, an Agricultural Contractor's estimated project costs shall not be reduced by the transfer of any of the 130, 000 acre-feet of annual entitlements provided for in subdivisions (a) through (i) of Article 53. The proportionate shares for 1997 through 2001 shall be calculated as follows:

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(i) Each Agricultural Contractor's statement of charges received on July 1, 1994, shall be the initial basis for calculating the proportionate shares for the five years 1997 through 2001.

(ii) Each Agricultural Contractor's estimated capital and minimum components of the Delta Water Charge and the Transportation Charge (excluding off-aqueduct power charges) and Water Revenue Bond Surcharge shall be totaled for the years 1997 through 2035.

(iii) Kern County Water Agency and Dudley Ridge Water District totaled costs shall be reduced for the 45,000 acre-feet of annual entitlement being relinquished by them.

(iv) Any reductions in an Agricultural Contractor's totaled costs resulting from the transfer of any of the 130,000 acre-feet of annual entitlement shall be re-added to that contractor's costs.

(v) Each Agricultural Contractor's proportionate share shall be computed by dividing that contractor's total costs by the total costs for all Agricultural Contractors determined pursuant to subparagraphs (ii), (iii) and (iv) above.

(2) The reductions in annual charges, for 1997 through 2001, shall be calculated using the method described in subdivision (g)(1) of this article.

(3) The allocation shall be recalculated using the same method described in subdivision (g)(1) of this article every five years beginning in 2002, if any Agricultural Contractor requests such a recalculation. Any recalculation shall be based on project cost data beginning with the year that the recalculation is to become effective through 2035.

(h) Agricultural Rate Management Trust Fund

(1) **Establishment**. Through a trust agreement executed contemporaneously with this amendment, the State and the Agricultural Contractors that sign the Monterey Amendments shall establish the Agricultural Rate Management Trust Fund with a mutually agreed independent trustee.

(2) **Separate Accounts.** The trustee shall maintain within the trust fund a separate account for each Agricultural Contractor that signs the trust agreement to hold deposits made pursuant to this article.

(3) **Deposits**. Each Agricultural Contractor that signs the trust agreement shall deposit into such contractor's account within the trust fund, at the same time as payments would otherwise be required by this contract to be made to the State, an amount equal to the amount by which such contractor's charges under this contract have been reduced by reason of this article, until the balance in such contractor's account within the trust fund is the same percentage of $150,000,000 as such contractor's percentage share of reductions made available to all Agricultural Contractors as specified in subdivision (g) of this article. In 2002 and every fifth year thereafter, the Agricultural Contractors will review the maximum accumulation in the trust fund (the "Cap") and determine

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whether the cap should be adjusted. However, the Cap shall not be reduced below an aggregate of $150,000,000 for all Agricultural Contractor accounts.

(4) **Trust Fund Disbursements.**

(i) In any year in which the State's allocation of water to an Agricultural Contractor by April 15th of that year is less than one-hundred percent (100%) of the contractor's requested annual entitlement for that year, the trustee shall, to the extent there are funds in that contractor's account, distribute to the State from such account for the benefit of that contractor an amount equal to the percentage of the total of that contractor's statement of charges for that year, as redetermined by the State on or about May 15th of that year, for (a) the Delta Water Charge; (b) the capital cost and minimum operation, maintenance, power and replacement components of the Transportation Charge (including off-aqueduct power charges); and (c) the water system revenue bond surcharge, that is equal to the percentage of that contractor's annual entitlement for that year that was not allocated to it by the State by April 15th of that year.

(ii) In addition to the provisions of subdivision (h)(4)(i) of this article, if on April 15 of any year any of the irrigable land within the Tulare Lake Basin Water Storage District (Tulare) is flooded, and Tulare in writing requests the trustee to do so, the trustee shall, to the extent there are funds in Tulare's account, distribute to the State from such account for the benefit of Tulare an amount equal to the percentage of the total of Tulare's statement of charges for that year, as redetermined by the State on or about May 15th of that year, for (a) the Delta Water Charge; (b) the capital cost and minimum components of the Transportation Charge (including off-aqueduct power charges); and (c) the water system revenue bond surcharge, that is equal to the percentage of the irrigable land within Tulare that is flooded on April 15.

(iii) Each Agricultural Contractor shall remain obligated to make payments to the State as required by other articles in this contract. Any amount to be disbursed pursuant to subdivisions (h)(4)(i) and (h)(4)(ii) shall be paid by the trustee to the State on July 1 of the year involved and shall be credited by the State toward any amounts owed by such respective Agricultural Contractor to the State as of that date. However, an Agricultural Contractor may direct the trustee to make the disbursement to that Agricultural Contractor which shall in turn make the payment to the State as required by other provisions of this contract. If the amount to be disbursed exceeds the amount owed to the State by such contractor as of July 1, the excess shall be disbursed by the Trustee to the State at the time of and in payment of future obligations owed to the State by such contractor. Alternatively, upon the request of such contractor, all or part of the excess shall be paid by the trustee to that contractor in reimbursement of prior payments by the contractor to the State for that year.

(5) **Payment of Supplemental Bills.** In any year in which a supplemental bill has been submitted to an Agricultural Contractor pursuant to subdivision (c)(4) of this article, such supplemental bill shall be treated as reducing by an equal amount the

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obligation of such contractor for that year to make payments into the Agricultural Rate Management Trust Fund. To the extent that such contractor has already made payments to the trust fund in an amount in excess of such contractor's reduced trust fund payment obligation, such contractor may request the trustee to use the excess from the trust fund to pay the supplemental bill.

(6) **Discharge of Payment Obligation.** Each payment to the State by the trust fund shall discharge and satisfy the Agricultural Contractor's obligation to pay the amount of such payment to the State. No reimbursement of the trust fund by the Agricultural Contractor for such payments shall be required. However, each Agricultural Contractor shall continue to make deposits to the trust fund matching the amount of each year's reductions as provided in subdivision (d) of this article so long as the amount in that contractor's account is less than its share of the Cap.

(7) **Distribution of Funds in Excess of the Cap.** Whenever accumulated funds (including interest) in an Agricultural Contractor's account in the trust fund exceed that contractor's share of the Cap, or the estimated remaining payments the contractor is required to make to the State prior to the end of the project repayment period, that contractor may direct the trustee to pay such excess to the contractor.

(8) **Termination of Trust Fund.** At the end of the project repayment period, the Agricultural Rate Management Trust Fund shall be terminated and any balances remaining in the accounts for each of the Agricultural Contractors shall be disbursed to the respective Agricultural Contractors.

(i) **Definitions.** For the purposes of this article, the following definitions will apply:

(1) "Agricultural Contractor" shall mean the following agencies as they now exist or in any reorganized form:

(i) County of Kings,
(ii) Dudley Ridge Water District,
(iii) Empire West Side Irrigation District,
(iv) Kern County Water Agency for 993,300 acre-feet of its entitlement,
(v) Oak Flat Water District,
(vi) Tulare Lake Basin Water Storage District.

(2) "Urban Contractor" shall mean every other agency having a long term water supply contract with the State as they exist as of the date of this amendment or in any reorganized form as well as Kern County Water Agency for 119,600 acre-feet of its entitlement.

(j) <No Subtitle> Except as provided in subdivisions (c)(4) and (c)(5), this article shall not be interpreted to result in any greater State authority to charge the contractors than exists under provisions of this contract other than this article.

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52.[68] KERN WATER BANK

(a) <No Subtitle> The State shall convey to the Kern County Water Agency (KCWA) in accordance with the terms set forth in the agreement between the State of California Department of Water Resources and Kern County Water Agency entitled "Agreement for the Exchange of the Kern Fan Element of the Kern Water Bank" (the Kern Water Bank Contract), the real and personal property described therein.

(b) <No Subtitle> Subject to the approval of KCWA, other contractors may be provided access to and use of the property conveyed to KCWA by the Kern Water Bank Contract for water storage and recovery. Fifty percent (50%) of any project water remaining in storage on December 31, 1995, from the 1990 Berrenda Mesa Demonstration Program and the La Hacienda Water Purchase Program shall be transferred to KCWA pursuant to the Kern Water Bank Contract. The remaining fifty percent (50%) of any such water (approximately 42,828.5 acre-feet) shall remain as project water and the State's recovery of such project water shall be pursuant to the provisions of a separate recovery contract. Any other Kern Water Bank demonstration program water shall remain as project water and the State's recovery of such water shall be pursuant to the provisions of the respective contracts for implementation of such demonstration programs.

53.[69] PERMANENT TRANSFERS AND REDUCTIONS OF ENTITLEMENT

(a) **<No Subtitle>** Article 41 provides that no assignment or transfer of a contract or any part thereof, rights thereunder or interest therein by a contractor shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose. In accordance with State policy to assist water transfers, the State and the County of Kings, Dudley Ridge Water District (DRWD), Empire West Side Irrigation District, Kern County Water Agency (KCWA), Oak Flat Water District and Tulare Lake Basin Water Storage District (for the purposes of this article the "Agricultural Contractors") shall, subject to the conditions set forth in this article, expeditiously execute any necessary documents and approve all contracts between willing buyers and willing sellers until permanent transfers totaling 130,000 acre-feet of annual entitlements of the Agricultural Contractors and, to the extent provided in such contracts, rights in project transportation facilities related to such annual entitlement have been made to other contractors (the "Urban Contractors") or noncontractors in accordance with the provisions of this article. Such approval requirement shall apply to all contracts executed prior to January 1, 2011. KCWA shall be responsible for approval of such transfers for any portion of the 130,000 acre-feet not previously made available under this article by the other Agricultural Contractors. A contract between a willing buyer and a willing seller shall mean a contract between (1) a buyer which is an Urban Contractor or, to the extent provided in subdivision (e) of this article, a noncontractor and (2) a seller which is an Agricultural Contractor or a public entity which obtains project water from an Agricultural Contractor.

(b) **<No Subtitle>** The State shall not be obligated to approve any transfer of annual entitlements if in its judgment the transfer would impair the security of the State's bondholders

68 Amended: Amendment No. 22
69 Amended: Amendment No. 22

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and the State may impose conditions on any transfer as necessary to make the delivery of the water operationally feasible and to assure that the transportation costs associated with the transferred entitlement are fully repaid. Transfers not approved by the State shall not be considered as part of the 130,000 acre-feet of annual entitlements provided for in this article.

(c) **<No Subtitle>** KCWA member units shall have 90 days to exercise a right of first refusal to purchase any annual entitlements being offered for sale to Urban Contractors by another KCWA member unit pursuant to this article, other than those annual entitlements made available to Urban Contractors by subdivision (d) of this article, by agreeing to pay the same price offered by the buyer. Any such sales to KCWA member units exercising such right of first refusal shall not be considered a part of the 130,000 acre-feet of annual entitlements provided for in this article.

(d) **<No Subtitle>** Any permanent transfers of annual entitlements by Agricultural Contractors to noncontractors, including transfers to KCWA urban member units or to KCWA's Improvement District Number 4, other than transfers pursuant to subdivision (c) of this article, will be considered a part of the 130,000 acre-feet of annual entitlements provided for in this article if the Urban Contractors have been given a right of first refusal to purchase such annual entitlements as well as transportation rights in accordance with the following terms and procedure:

(1) The Agricultural Contractor shall provide the State a copy of a bona fide contract or Proposed Contract (the "Proposed Contract") and the State shall, within five working days of receipt, provide copies of such Proposed Contract to all Urban Contractors together with a Notice of Proposed Contract stating the date on or before which a Notice of Intent to Exercise a Right of First Refusal (NOI) must be delivered to both the State and the seller, which date shall be 90 days from the date the State mails the Notice of Proposed Contract.

(2) The Proposed Contract shall provide for the transfer of rights in project transportation facilities sufficient to deliver to the seller's service area in any one month eleven percent (11%) of the annual entitlement being transferred or such greater amount as the seller determines to sell; *Provided,* however, that sellers shall not be obligated to sell any transportation rights in the Coastal Aqueduct.

(3) To exercise the right of first refusal, an Urban Contractor shall deliver to the State and the seller its NOI within the time period stated in the Notice of Proposed Contract and shall proceed in good faith to try to complete the transfer to the Urban Contractor. If two or more Urban Contractors deliver NOI's to the State, the amount of annual entitlement and transportation rights being sold shall be allocated among those Urban Contractors that are prepared to perform the purchase by the Performance Date provided for herein in proportion to their maximum annual entitlements, or in another manner acceptable to the Urban Contractors delivering the NOIs. An offer by an Urban Contractor in its NOI to purchase less than the entire annual entitlement and transportation right being transferred shall not be deemed to be an effective exercise of the right of first refusal unless other Urban Contractors submit NOIs to purchase the remainder of the annual entitlement and transportation right or the noncontractor buyer agrees to purchase the remainder at the same unit price and on the same terms and

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conditions provided for in the Proposed Contract. The Performance Date shall be the date upon which the Urban Contractor is prepared to perform the purchase, which date shall be the later of: (1) 180 days after the delivery of the NOI or (2) the date set forth in the Proposed Contract for the noncontractor buyer to perform the purchase.

The Performance Date shall be extended at the request of the Urban Contractor if a temporary restraining order or preliminary injunction is in effect as a result of a lawsuit challenging the execution of the contract on the basis of noncompliance with the California Environmental Quality Act. Such extensions shall continue until five days after the temporary restraining order or injunction expires or until the Urban Contractor requests it be discontinued, whichever occurs first. The Urban Contractor shall be liable for any damages suffered by the seller as a result of such extensions of the Performance Date.

(4) If the seller and the noncontractor buyer under the Proposed Contract make any substantive changes in the Proposed Contract, such changes shall constitute a new Proposed Contract that cannot be performed without compliance with all of the procedures set forth in this article.

(5) If an Urban Contractor issuing a NOI fails to complete its exercise of the Right of First Refusal by the Performance Date, the seller shall be free to sell its entitlement in substantial conformance with the terms and conditions set forth in the Proposed Contract. An Urban Contractor issuing a NOI may assign its rights to exercise a right of first refusal to another Urban Contractor and the assignee shall have the same rights as the assignor to complete the purchase by the Performance Date.

(6) In exercising the Right of First Refusal, an Urban Contractor, at its option, may either agree to perform the Proposed Contract in its entirety, including all of its terms and conditions, or agree to pay the price offered under the Proposed Contract for the annual entitlement and transportation rights without condition and without being entitled to enforce or being subject to any other provisions of the Proposed Contract.

(e) **<No Subtitle>** As used in this article, “price” shall mean the dollar amount of consideration provided for in the Proposed Contract.

(f) **<No Subtitle>** Upon the effective date of any such transfer, the seller shall be relieved of and the buyer shall become liable to the State for all prospective Delta Water Charges, the related Transportation Charges and any other charges for the annual entitlements and associated transportation rights transferred unless the seller and buyer provide otherwise in the contract for the transfer and the State approves such other provisions. However, the contractor making the sale shall remain obligated to the State to make the payments if the buyer defaults on its payments to the State related to the water transferred and is not a party to a long term water supply contract of the type contained in Department of Water Resources Bulletin Number 141. If the contractor making the sale is required to make any payments to the State as a result of the buyer’s default, the entitlement transferred to the defaulting buyer shall, if provided for in the Proposed Contract, revert back to the contractor making the sale. The buyer may also be liable for any charges imposed pursuant to subdivision (g) of this article.

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(g) **<No Subtitle>** A contractor which is a buyer of annual entitlement pursuant to this article may receive deliveries using any portion of the capacity previously provided by the State in each reach of the project transportation facilities for such contractor that is necessary for transporting the entitlement purchased by it on the same basis as any other entitlement provided for in its Table A in effect prior to the date of the Monterey Amendment. Such contractor may also use any transportation rights transferred to it by a seller in the same manner as the seller was entitled to use them and any unused capacity in any of the reaches specified in this paragraph so long as project operations and/or priority of service of water to other contractors participating in repayment of capital costs in such reaches is not adversely affected. The State shall not be responsible for any resulting adverse impacts upon its ability to provide such contractor peaking capacity. The capital cost and minimum, operation, maintenance, power and replacement components of the Transportation Charge allocated to a buying contractor needing transportation capacity in excess of the capacity factors on which its charges are based in any reach shall be determined prospectively based upon the increase in the buying contractor's annual entitlement resulting from the purchase, and service of water to fulfill annual entitlement to other contractors shall not be impaired. The capital cost and minimum operation, maintenance, power and replacement components of the Transportation Charges shall then be reallocated among the other entities participating in repayment of costs of that reach. For the purposes of this determination, all payments received by the State from the seller relating to the annual entitlement sold shall be deemed to have been received from the buying contractor. Any increased Transportation minimum operation, maintenance, power and replacement component charges allocated to the buying contractor pursuant to this subdivision (g) shall begin January 1 of the year following the effective date of the transfer.

(h) **<No Subtitle>** Individual contractors may transfer entitlements among themselves in amounts in addition to those otherwise provided for in this article. The State shall expeditiously execute any necessary documents and approve all contracts involving permanent sales of entitlements among contractors, including permanent sales among Urban Contractors. Such sales shall be subject to the provisions of subdivisions (b), (f) and (g) of this article; *Provided*, however, that for a buying contractor needing transportation capacity in excess of the capacity factors on which its charges are based in any reach, reallocation of the Transportation capital cost component charges for transfers other than (i) the 130,000 acre-feet provided for in this article and (ii) the approximate 33,000 acre-feet of transfers proposed from contractors located in Santa Barbara or San Luis Obispo counties, shall be determined both prospectively and retroactively.

(i) **<No Subtitle>** On January 1 following the year in which such Monterey Amendments take effect and continuing every year thereafter until the end of the project repayment period: (i) Kern County Water Agency's (KCWA) annual entitlement for agricultural use as currently designated in Table A-1 of its contract shall be decreased by 40,670 acre-feet; (ii) Dudley Ridge Water District's (DRWD) annual entitlement as currently designated in Table A of its contract shall be decreased by 4,330 acre-feet; and (iii) the State's prospective charges (including any adjustments for past costs) for the 45,000 acre-feet of annual entitlements to be relinquished by KCWA and DRWD thereafter shall be deemed to be costs of project conservation facilities and included in the Delta Water Charge for all contractors in accordance with the provisions of Article 22. If by November 20, 1995 and each October 1 thereafter until

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the Monterey Amendments of both KCWA and DRWD take effect, KCWA and DRWD at their option notify the State in writing that they will relinquish up to their shares of 45,000 acre-feet of annual entitlements for the following calendar year beginning before the Monterey Amendments take effect, the State, when and if the Monterey Amendments take effect, shall adjust the charges retroactively for the acre-feet relinquished by KCWA and DRWD to January 1 of each year for which water was relinquished. The delivery points for the 45,000 acre-feet of annual entitlement to be relinquished shall be identified for the State by KCWA and DRWD to enable the State to calculate the transportation costs for the 45,000 acre-feet to be included in the Delta Water Charge.

54.[70] Usage of Lakes Castaic and Perris

(a) **<No Subtitle>** The State shall permit the contractors participating in repayment of the capital costs of Castaic Lake (Reach 30) and Lake Perris (Reach 28J) to withdraw water from their respective service connections in amounts in excess of deliveries approved pursuant to other provisions of the state water contracts. Each such contractor shall be permitted to withdraw up to a Maximum Allocation from the reach in which it is participating. The contractors participating in repayment of Castaic Lake may withdraw a collective Maximum Allocation up to 160,000 acre-feet pursuant to this article, which shall be apportioned among them pursuant to the respective proportionate use factors from the Department of Water Resources' Bulletin 132-94, Table B-1 upon which capital cost repayment obligations are based, as follows:

Castaic Lake

Participating Contractor	Proportionate Use Factor	Maximum Allocation (Acre Feet)
The Metropolitan Water District of Southern California	0.96212388	153,940
Ventura County Flood Control and Water Conservation District	0.00860328	1,376
Castaic Lake Water Agency	0.02927284	4,684
Total	1.00000000	160,000

The Metropolitan Water District of Southern California, as the only contractor participating in repayment of Lake Perris, shall be allocated a Maximum Allocation at Lake Perris of 65,000 acre-feet based upon a proportionate use factor of 1.00000000.

The Maximum Allocation totals of 160,000 acre-feet and 65,000 acre-feet shall not be subject to adjustment. The individual contractor's Maximum Allocations shall be adjusted only as agreed to among the contractors desiring to adjust their Maximum Allocations. Adjustments between the contractors shall be subject to approval of the State which approval shall be given unless there are adverse impacts upon another contractor participating in the reach which are

70 Amended: Amendment No. 22

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unacceptable to such contractor. The participating contractors will, in consultation with the State, cooperate with each other in an effort to promote efficient utilization of Castaic Lake, and to minimize any adverse impacts to each other, through coordination of deliveries pursuant to other provisions of the State Water Contract as well as withdrawals of allocations pursuant to this article.

(b) **<No Subtitle>** The State shall operate Castaic and Perris Reservoirs as transportation facilities in a manner consistent with this article. A contractor desiring to withdraw a portion or all of its Maximum Allocation shall furnish the State with a proposed delivery schedule. The proposed schedule may be submitted as part of the preliminary water delivery schedule submitted pursuant to Article 12(a)(1). Upon receipt of a schedule the State shall promptly review it to ensure that the amounts, times and rates of delivery will be consistent with the State's ability to operate the reach. The contractor may modify its proposed delivery schedule at any time, and the modified schedule shall be subject to review in the same manner. If necessary, the State may modify the schedule after consultation with the contractor and other contractors participating in repayment of that reach but may not change the total quantity of water to be withdrawn. As part of the consultation, the State shall advise a contractor if it determines a withdrawal will adversely impact the rate of delivery provided for the contractor in this contract. The State shall not be responsible for any such impacts.

(c) **<No Subtitle>** A contractor may withdraw all or a portion of its Maximum Allocation. It shall restore any withdrawn portion of such allocation by furnishing an equivalent amount of replacement water to the reservoir from which the water was withdrawn within five years from the year in which the withdrawal takes place. The unused portion of the allocation, in addition to any replacement water furnished to the reservoir, shall remain available for subsequent withdrawal. The State shall keep an accounting of the contractor's storage withdrawals and replacements. In any year, the State shall permit a contractor to withdraw an amount equivalent to the contractor's Maximum Allocation minus remaining replacement water requirements due to previous withdrawals. If the contractor fails to schedule and replace the withdrawn water within the five-year return period, the State shall provide the replacement water from water scheduled for delivery to the contractor in the sixth year or as soon as possible thereafter. The total amount of scheduled annual entitlement which a contractor can use in any one year for restoring its Maximum Allocation and storing water in surface storage facilities outside of its service area pursuant to Article 56 shall be the sum of the maximum amount the contractor can add to storage that year pursuant to Article 56 and the amount of acre-feet shown in column 2 of the following table, depending on the State's final water supply allocation percentage as shown in column 1.

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1. Final Water Supply Allocation Percentage	2. Maximum Acre-Feet of Scheduled Entitlement for Restoring Maximum Allocation*
50% or less	100,000
51%	98,000
52%	96,000
53%	94,000
54%	92,000
55%	90,000
56%	88,000
57%	86,000
58%	84,000
59%	82,000
60%	80,000
61%	78,000
62%	76,000
63%	74,000
64%	72,000
65%	70,000
66%	68,000
67%	66,000
68%	64,000
69%	62,000
70%	60,000
71%	58,000
72%	56,000
73%	54,000
74%	52,000
75 to 99%	50,000
100%	no limit

* Excludes the maximum amount that can be added to storage in a year pursuant to Article 56, which may be used in addition to the amounts in this table to restore Maximum Allocation.

A contractor may use any of this total amount for replacement water but cannot use any more than that provided for in Article 56 to add to storage in project surface conservation facilities and in nonproject surface storage facilities. There shall be no limit under this article on the amount of scheduled annual entitlement a contractor can use to restore its Maximum Allocation in a year when its percentage of annual water supply allocation is one-hundred percent (100%), nor shall there be any limit under this article on the amount of interruptible water, nonproject water or water obtained through an exchange which a contractor can use to restore its Maximum Allocation.

(d) **<No Subtitle>** For any replacement water furnished to reservoir storage pursuant to this article, the responsible contractor shall pay the State charges for the conservation, if any,

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and transportation of such replacement water as are associated with the type of replacement water that is furnished, as if such water were delivered to the turnout at the reservoir to which the replacement water is furnished. Adjustments from estimated to actual costs shall be subject to provisions applicable to the type of replacement water. The State shall not charge contractors for water withdrawn pursuant to this article.

(e) **<No Subtitle>** The State shall operate capacity in Castaic and Perris Reservoirs, not required for purposes of Maximum Allocation deliveries, in compliance with the requirement of Article 17(b) of The Metropolitan Water District of Southern California's water supply contract with the State to maintain an amount of water reasonably sufficient to meet emergency requirements of the contractors participating in repayment of that reach. A contractor receiving water pursuant to this article accepts that the State shall not be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available from that reservoir to meet the contractor's actual emergency requirements as a result of prior storage withdrawals by that contractor pursuant to this article. Nothing in this article shall permit or require the State to adjust allocations or deliveries under Article 18.

(f) **<No Subtitle>** To the extent a contractor, during a calendar year, uses all or a portion of its Maximum Allocation, the State may, to the extent necessary to service project purposes, reduce that contractor's requested peaking service. Such reduction in peaking service shall only occur to the extent such usage of Maximum Allocation causes the State to be unable to provide all peaking service requested. This paragraph shall not apply to the extent the contractor requested usage of Maximum Allocation as part of the preliminary water delivery schedule submitted pursuant to Article 12(a)(1).

(g) **<No Subtitle>** The State may reduce water stored in Castaic Lake and Lake Perris to the extent necessary for maintenance and to respond to emergencies resulting from failure of project transportation facilities or of other supply importation facilities serving the State project service area. The State shall promptly replace water within the Maximum Allocation as soon as the need for the reduction terminates.

55.[71] Transportation of Nonproject Water

(a) **<No Subtitle>** Subject to the delivery priorities in Article 12(f), contractors shall have the right to receive services from any of the project transportation facilities to transport water procured by them from nonproject sources for delivery to their service areas and to interim storage outside their service areas for later transport and delivery to their service areas: *Provided*, that except to the extent such limitation in Section 12931 of the Water Code be changed, a contractor shall not use the project transportation facilities under this option to transport water the right to which was secured by the contractor through eminent domain unless such use be approved by the Legislature by concurrent resolution with the majority of the members elected to each house voting in favor thereof.

(b) **<No Subtitle>** For any nonproject water delivered pursuant to this article, contractors shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the conservation and transportation

71 Amended: Amendment No. 22

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of such water as if such nonproject water were entitlement water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, which may include an administrative or contract preparation charge, all as determined by the State. Incremental costs shall mean those nonpower costs which would not be incurred if nonproject water were not scheduled for or delivered to contractors. Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for the delivery of nonproject water from or through that reach. Costs for transporting water placed into interim storage shall be paid in the same manner provided for in subdivision (c)(6) of Article 56.

(c) **<No Subtitle>** The amounts, times and rates of delivery of nonproject water shall be provided for pursuant to a water delivery schedule to be issued in the same manner as provided for in Article 12. The costs specified in this article shall be paid for at the same time the corresponding project water costs are paid.

56.[72] Use, Storage, and Sale of Project Water Outside of Service Area and Storage of Water in Project Surface Conservation Facilities

(a) State Consent to Use of Project Water Outside of Service Area

Notwithstanding the provisions of Article 15(a), the State hereby consents to the District storing project water outside its service area for later use within its service area in accordance with the provisions of subdivision (c) of this article and to the District selling project water for use outside its service area in accordance with the provisions of subdivision (d) of this article.

(b) Groundwater Storage Programs

The District shall cooperate with other contractors in the development and establishment of groundwater storage programs.

(c) Storage of Project Water Outside of Service Area

(1) A contractor may elect to store project water outside its service area for later use within its service area, up to the limits and in accordance with the provisions provided for in this subdivision (c) and any applicable water right laws, by setting forth on the preliminary water delivery schedule submitted to the State on or before October 1 of each year pursuant to Article 12(a) the quantity of project water it wishes to store in the next succeeding year. There shall be no limit on the amount of project water a contractor can store outside its service area during any year in a then existing and operational groundwater storage program. The amount of project water a contractor can add to storage in project surface conservation facilities and in nonproject surface storage facilities located outside the contractor's service area each year shall be limited to the lesser of the percent of the contractor's Table A annual entitlement shown in column 2 or the acre-feet shown in column 3 of the following table, depending on the State's final water supply allocation percentage as shown in column 1. However, there shall be no limit to storage in nonproject facilities in a year in which the State's final water supply allocation percentage is one hundred percent. These limits shall not apply to water stored pursuant to Article 12(e).

72 Amended: Amendment No. 22

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1. Final Water Supply Allocation Percentage	2. Maximum Percent of District's Annual Entitlement That Can be Stored	3. Maximum Acre-Feet That Can be Stored
50% or less	25%	100,000
51%	26%	104,000
52%	27%	108,000
53%	28%	112,000
54%	29%	116,000
55%	30%	120,000
56%	31%	124,000
57%	32%	128,000
58%	33%	132,000
59%	34%	136,000
60%	35%	140,000
61%	36%	144,000
62%	37%	148,000
63%	38%	152,000
64%	39%	156,000
65%	40%	160,000
66%	41%	164,000
67%	42%	168,000
68%	43%	172,000
69%	44%	176,000
70%	45%	180,000
71%	46%	184,000
72%	47%	188,000
73%	48%	192,000
74%	49%	196,000
75% or more	50%	200,000

(2) Storage capacity in project surface conservation facilities at any time in excess of that needed for project operations shall be made available to requesting contractors for storage of project and nonproject water. If such storage requests exceed the available storage capacity, the available capacity shall be allocated among contractors requesting storage in proportion to their annual entitlements designated in their Table A's for that year. A contractor may store water in excess of its allocated share of capacity as long as capacity is available for such storage.

(3) If the State determines that a reallocation of excess storage capacity is needed as a result of project operations or because of the exercise of a contractor's storage right, the available capacity shall be reallocated among contractors requesting storage in proportion to their annual entitlements designated in their Table A's for that year. If such reallocation results in the need to displace water from the storage balance for any contractor or noncontractor, the water to be displaced shall be displaced in the following order of priority:

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First, water, if any, stored for noncontractors.

Second, water stored for a contractor that previously was in excess of that contractor's allocation of storage capacity.

Third, water stored for a contractor that previously was within that contractor's allocated storage capacity.

The State shall give as much notice as feasible of a potential displacement.

(4) Any contractor electing to store project water outside its service area pursuant to this subdivision may not sell project water under the provisions of subdivision (d) of this article during the year in which it elected to store project water. This limitation shall not apply to replacement water furnished to Castaic and Perris Reservoirs pursuant to Article 54, nor to the storage of water introduced into a groundwater basin outside a contractor's service area if recovery is intended to occur within that contractor's service area.

(5) The restrictions on storage of project water outside a contractor's service area provided for in this subdivision (c), shall not apply to storage in any project offstream storage facilities constructed south of the Delta after the date of this amendment.

(6) For any project water stored outside its service area pursuant to this subdivision (c), a contractor shall pay the State the same (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as the contractor pays for the transportation of annual entitlement to the reach of the project transportation facility from which the water is delivered to storage. If annual entitlement is stored, the Delta Water Charge shall be charged only in the year of delivery to interim storage. For any stored water returned to a project transportation facility for final delivery to its service area, the contractor shall pay the State the same for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water calculated from the point of return to the aqueduct to the turn-out in the contractor's service-area. In addition, the contractor shall pay all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if such water were scheduled for or delivered to the contractor's service area instead of to interim storage outside the service area. Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for use of a reach for the delivery of water to, or return of water from, interim storage.

(7) A contractor electing to store project water in a nonproject facility within the service area of another contractor shall execute a contract with that other contractor prior to storing such water which shall be in conformity with this article and will include at least provisions concerning the point of delivery and the time and method for transporting such water.

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(d) Sale of Project Water For Use Outside Service Area

(1) If in any year a contractor has been allocated annual entitlement that it will not use within its service area, the contractor has not elected to store project water in accordance with the provisions of subdivision (c) of this article during that year, and the contractor has not elected to carry over entitlement water from the prior year pursuant to the provisions of Article 12(e), the contractor may sell such annual entitlement for use outside its service area in accordance with the following provisions.

(2) Each year the State shall establish an annual entitlement water pool (the Pool) for contractors wishing to sell or buy project water pursuant to the provisions of this subdivision. The Pool shall constitute the exclusive means of selling portions of annual entitlements not desired by contractors that year. Contractors willing to sell to or buy water from the Pool shall notify the State in writing of their desire to do so indicating the quantity to be sold or purchased. Contractors shall have the first priority to purchase all water placed in the Pool. The State may purchase any water remaining in the Pool not purchased by contractors at the same price available to contractors and use such water for the purpose of providing additional carryover storage for contractors: *Provided,* that the State shall consult with the contractors prior to making any such purchases.

(3) Each year, the price per acre-foot to be paid by the State to contractors selling water placed in the Pool on or before February 15 that is purchased by a contractor requesting such purchase by March 1 or by the State on March 1 shall be equal to fifty percent (50%) of the Delta water rate as of that date. The price per acre-foot to be paid to the State for the purchase of water from the Pool by a contractor placing a request for such purchase on or before March 1 shall be equal to fifty percent (50%) of the Delta water rate as of that date. Any water placed in the Pool on or before February 15 that is not purchased by contractors or the State by March 1 may be withdrawn from the Pool by the selling contractor.

(4) Each year the price per acre-foot to be paid by the State to contractors selling water remaining in the Pool or placed in the Pool after February 15, but on or before March 15 that is purchased by a contractor requesting such purchase by April 1 or by the State on April 1 shall be equal to twenty-five percent (25%) of the Delta water rate as of that date. The price per acre-foot to be paid to the State for the purchase of water from the Pool by a contractor placing a request for such purchase between March *2* and April 1 shall be equal to twenty-five percent (25%) of the Delta water rate as of the later date. Any water placed in the Pool on or before March 15 that is not purchased by a contractor or the State by April 1 may be withdrawn from the Pool by the selling contractor.

(5) If there are more requests from contractors to purchase water from the Pool than the amount in the Pool, the water in the Pool shall be allocated among those contractors requesting such water in proportion to their annual entitlements for that year up to the amount of their requests. If requests to purchase water from the Pool total less than the amount of water in the Pool, the sale of Pool water shall be allocated among the contractors selling such water in proportion to their respective amounts of water in the Pool.

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(6) Any water remaining in the Pool after April 1 that is not withdrawn by the selling contractor shall be offered by the State to contractors and noncontractors and sold to the highest bidder: *Provided*, that if the highest bidder is a noncontractor, all contractors shall be allowed fifteen days to exercise a right of first refusal to purchase such water at the price offered by the noncontractor. The price to be paid to the selling contractor shall be the amount paid by the buyer exclusive of the amount to be paid by the buyer to the State pursuant to subdivision (d)(7) of this article.

(7) For any water delivered from the Pool to contractors, the buyer shall pay the State the same for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as if such water were entitlement water, as well as all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if such water were not scheduled for or delivered to the buyer. Only those buyers not participating in the repayment of a reach shall be required to pay any use of facilities charge for the delivery of such water from or through the reach. Adjustments from estimated to actual costs shall be computed by the State pursuant to these provisions and shall be paid by the buyer or credited to the buyer at the times and interest rates described in Article 28(c).

(e) Continuance of Article 12(e) Carry-over Provisions

The provisions of this article are in addition to the provisions of Article 12(e), and nothing in this article shall be construed to modify or amend the provisions of Article 12(e). Any contractor electing to sell project water during any year in accordance with the provisions of subdivision (d) of this article, shall not be precluded from using the provisions of Article 12(e) for carrying over water from the last three months of that year into the first three months of the succeeding year.

(f) Bona Fide Exchanges Permitted

Nothing in this article shall be deemed to prevent the District from entering into bona fide exchanges of project water for use outside the District's service area with other parties for project water or nonproject water if the State consents to the use of the project water outside the District's service area. Also, nothing in this article shall be deemed to prevent the District from continuing those exchange or sale arrangements entered into prior to September 1, 1995, which had previously received any required State approvals. A "bona fide exchange" shall mean an exchange of water involving a contractor and another party where the primary consideration for one party furnishing water to another is the return of a substantially similar amount of water, after giving due consideration to the timing or other nonfinancial conditions of the return. Reasonable payment for costs incurred in effectuating the exchange and reasonable deductions from water delivered, based on expected storage or transportation losses may be made. A "bona fide exchange" shall not include a transfer of water from one contractor to another party involving a significant payment unrelated to costs incurred in effectuating the exchange. The State, in consultation with the contractors, shall have authority to determine whether transfers of water constitute "bona fide exchanges" within the meaning of this paragraph and not disguised sales.

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(g) Other Transfers

Nothing in this article shall be deemed to modify or amend the provisions of Article 15(a), or Article 41, except as expressly provided for in subdivisions (c) and (d) of this article.

57. [73]<Intentionally Left Blank for Future Use.>

58. [74]Determination of Dependable Annual Supply of Project Water to be Made Available by Existing Project Facilities.

In order to provide current information regarding the delivery capability of existing project conservation facilities, commencing in 2003 and every two years thereafter the State shall prepare and mail a report to all contractors, and all California city, county, and regional planning departments and agencies within the contractors' project service areas. This report will set forth, under a range of hydrologic conditions, estimates of overall delivery capability of the existing project facilities and of supply availability to each contractor in accordance with other provisions of the contractors' contracts. The range of hydrologic conditions shall include the delivery capability in the driest year of record, the average over the historic extended dry cycle and the average over the long-term. The biennial report will also include, for each of the ten years immediately preceding the report, the total amount of project water delivered to all contractors and the amount of project water delivered to each contractor.

73 Amended: Amendment No. 23
74 Amended: Amendment No. 23

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IN WITNESS WHEREOF, the parties hereto have executed this contract on the date first above written.

STATE OF CALIFORNIA

By _____
Governor

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

By _____
Director

SANTA CLARA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By _____
Chairman

Approved as to legal form
and sufficiency:

_____
Chief Counsel
Department of Water Resources

Attest:

_____
Clerk of the Board
Santa Clara County Flood Control
and Water Conservation District

Approved as to form
and execution:

_____
Manager - Counsel
Santa Clara County Flood Control
and Water Conservation District

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ATTACHMENT 1

<Amendment No 19>
<Only would apply if condition in Article 50(i)(5) met.>

Article 1(r) is amended to read:

(r) Project Interest Rate

"Project interest rate" shall mean the weighted average interest rate of (1) through (6) below computed by dividing (i) the total interest cost required to be paid or credited by the State during the life of the indebtedness or advance by (ii) the total of the products of the various principal amounts and the respective terms in years of all such amounts:

(1) general obligation bonds issued by the State under the Bond Act,

(2) revenue bonds issued by the State under the Central Valley Project Act after May 1, 1969,

(3) bonds issued by the State under any other authority granted by the Legislature or the voters,

(4) bonds issued by any agency, district, political subdivision, public corporation, or nonprofit corporation of this State,

(5) funds advanced by any contractor without the actual incurring of bonded debt therefor, for which the net interest cost and terms shall be those which would have resulted if the contractor had sold bonds for the purpose of funding the advance, as determined by the State, and

(6) funds borrowed from the General Fund or other funds in the Treasury of the State of California, for which the total interest cost shall be computed at the interest rate earned over the period of such borrowing by moneys in the Pooled Money Investment Account of such Treasury invested in securities, to the extent the proceeds of any such bonds, advances or loans are for construction of the State Water Facilities defined in Section 12934(d) of the Water Code, the additional project conservation facilities, and the supplemental conservation facilities, (except off-aqueduct power facilities and advances for delivery structures, measuring devices and excess capacity) and without regard to any premiums received on the sale of bonds under item (1) above. The "project interest rate" shall be computed as a decimal fraction to five places.

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