

THE MONTEREY AGREEMENT – STATEMENT OF PRINCIPLES

by the

STATE WATER CONTRACTORS

and the

STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES

FOR POTENTIAL AMENDMENTS TO THE STATE WATER SUPPLY CONTRACTS

**INTRODUCTION**

State Water Project ("SWP") shortages in recent years have prompted both Agricultural Contractors ("Ag Contractors"), and Municipal and Industrial Contractors ("Urban Contractors"), (collectively, the "Contractors") to consider amendments to their water supply contracts with the State of California, Department of Water Resources ("DWR"). Some of the Contractors have considered litigation to resolve differences over water allocations. To avoid litigation, and to make the SWP operate more effectively for all Contractors, the parties, including DWR, have engaged in mediated negotiations toward a settlement of their disputes.

This document contains an agreed Statement of Principles that is the foundation for an agreement among the Contractors and DWR that will settle their disputes over water allocations and certain operational aspects of the SWP. The undersigned negotiators pledge their good faith efforts to work diligently toward a final written agreement. The Contractor negotiators further pledge to obtain ratification of these Principles by their respective Contractor groups and the Boards of Directors that they individually represent.

## STATEMENT OF PRINCIPLES

A written agreement with contract amendments and other implementing documents will contain provisions in accord with the following principles:

1. **Water allocations.** The SWP contracts shall be amended to provide that all future allocations of project water from existing project facilities are to be based on entitlements.

2. **Water allocations when requests exceed available supply.**

a. The water contracts will be amended to provide that each Contractor will be allocated the portion of total available project water supply equivalent to the ratio of its annual entitlement irrespective of type of use, as identified in its Table A, to the total annual entitlements of all Contractors as identified in Table A. If a Contractor declines allocated water, such water will be allocated in the same manner among other Contractors. The Contracts will further provide that the only permitted exceptions to this requirement are those necessary to comply with (i) a valid order of a court or the state water resources control board, or (ii) a valid declaration of emergency by the Governor pursuant to the Emergency Services Act in order to meet minimum demands for domestic supply, fire protection, or sanitation during the year.

b. Article 18(b) through the end of subparagraph (1) will be deleted.

3. **Kern Water Bank.** The Kern Fan Element property and related assets of the Kern Water Bank will be sold or leased on a long-term basis by DWR to designated Ag Contractors. In exchange, 45,000 acre-feet of Ag water entitlements will be transferred to DWR and retired. All fixed conservation and transportation charges for the transferred and retired entitlements will be added to the Contractors' Delta Water Charges. Subject to the approval of designated Ag Contractors, Urban Contractors may be provided access to and use of Kern Fan Element property and related assets of the Kern Water Bank for water storage.

Any project water remaining in the Kern Water Bank at the time of transfer of the property will split 50% to the project and 50% to be transferred with the property. The schedule and costs of delivery will be addressed in the implementation documents.

4. **Permanent Sales of Entitlement.**

a. **Ag-to-Urban entitlement transfers.**

i. Ag Contractors will make available for permanent transfer to Urban Contractors on a willing buyer-willing seller basis 130,000 acre-feet of annual entitlements, with Kern County Water Agency ("KCWA") being responsible for any portion of this amount not made available by other Ag Contractors. This provision will apply only to those transfer contracts executed prior to January 1,

2011.

ii. Ag Contractors and DWR will expeditiously approve such sales. As a condition of KCWA's approval of sales from within its service area, KCWA shall be entitled to receive a percentage of the gross sales price determined by that portion of the total SWP costs paid by KCWA's Zones of Benefit or other KCWA resources.

iii. KCWA member units shall have 90 days to exercise a right of first refusal to purchase any entitlement being offered to Urban Contractors by agreeing to pay the same price offered by the Urban purchaser. Such sales to KCWA member units will not diminish the 130,000 acre-foot obligation of KCWA.

b. **Ag-to-Non-Contractor transfers.** Any permanent transfers of entitlement by Ag Contractors to parties who are not Urban Contractors, including transfers to KCWA urban member units or to KCWA's Improvement District No. 4, will be considered a part of the 130,000 acre-feet to be made available to Urban Contractors pursuant to subsection (a), above, provided that Urban Contractors have been allowed 90 days to exercise a right of first refusal to purchase such entitlement at the price being offered by the prospective purchaser without conditions.

c. **Other Water transfers.** DWR will expeditiously approve permanent sales of entitlements among Contractors, including between Urban Contractors.

**5. Restructuring to ensure financial integrity of the SWP.** The SWP Contractors and DWR will develop financial programs involving funds related to State Water Project operations and payment of debt service on bonds to (i) bring the obligations of the parties into line with current market and regulatory circumstances facing the SWP, DWR and the Contractors; (ii) ensure the continuing financial viability of the SWP and improve security for bondholders; and (iii) provide for more efficient use of project water and facilities. These programs shall include:

a. In 1995, DWR will establish a general capital operating fund of \$15 million to be made available from bond reserves that are no longer required by bond covenants.

b. It is expected that new capital projects will be financed with revenue bonds, consistent with past practice. The definition of Water System Facilities in the Water Supply Contracts will be expanded to include a State Water Project Corporation Yard and a Project Operation Center and to allow DWR to finance these facilities with water system revenue bonds if DWR decides to build them. These facilities are estimated to cost \$35 million and \$45 million, respectively, in 1995 dollars. DWR will fully consult with the Contractors prior to issuing each series of water system revenue bonds for defined project facilities.

- c. When DWR pays off its obligation to the California Water Fund in 1997, additional moneys that become available will be dedicated to rate payment and other programs for Contractors. In 1997, \$14 million will be available for these purposes and will be applied as follows: \$10 million will be placed into a separate DWR trust fund ("Trust Fund") for stabilizing payments for Ag Contractors, and \$4 million will be distributed directly to Urban Contractors, as directed by the Urban Contractors for their management.
- d. In 1998, \$7.7 million will be placed in the DWR capital operating fund, bringing the balance to \$22.7 million. An additional \$17 million will be used as follows: \$10 million will be placed in the Trust Fund, and \$7 million will be distributed to Urban Contractors, as they direct.
- e. In 1999, \$32 million in additional funds will be used as follows: \$10 million will be placed in the Trust Fund and \$22 million will be distributed to Urban Contractors, as they direct.
- f. In 2000, funds will be used as follows: \$10 million will be placed in the Trust Fund and \$23 million will be distributed to Urban Contractors, as they direct.
- g. In 2001 when funds available exceed \$40.5 million, \$10 million will be placed in the Trust Fund, and \$30.5 million will be distributed to Urban Contractors, as they direct. The Director of DWR, in consultation with Contractors, will review the financial requirements of the SWP to determine if the amounts over \$40.5 million should be retained or whether such amounts can be applied to the Trust Fund and Urban Contractor disbursements on a 24.7%-75.3% basis, respectively. If amounts in excess of \$40.5 million are not retained by DWR, up to the first \$2 million will be disbursed to Urban Contractors, then the remaining amounts, if any, in excess of \$40.5 million will be applied to the Trust Fund and Urban Contractor disbursements on a 24.7%-75.3% basis respectively. Urban Contractors will receive up to the first \$2 million in excess of \$40.5 million every year until it has received a total of \$19.3 million, then all amounts in excess of \$40.5 million will be split between the Trust Fund and Urban Contractor disbursements on a 24.7%-75.3% basis. The Director of DWR and the Contractors will review this arrangement every five years after the initial review.
- h. The numbers and percentages in this Principle reflect certain estimates of dollars and sharing of revenue. The actual numbers may vary slightly from the numbers described above. These calculations shall be completed before and used in the implementing documents.
- i. The attached Exhibit A worksheet illustrates the estimated amounts and use of funds described above.
- j. Approval of these Principles is subject to the satisfactory resolution of issues relating

to the allocation of Urban refunds among Urban Contractors.

#### **6. Terminal Reservoirs - Points of Delivery.**

DWR commits to develop, in cooperation with Contractors participating in repayment of the costs of Perris and Castaic Reservoirs, ways to utilize the respective capacities and stored water to increase the reservoirs' potentials for more effective utilization in conjunction with local water supply facilities. As part of this process, DWR will analyze the impacts on the contractors and on SWP operations. Subject to terms and conditions to be negotiated, Contractors participating in repayment of the costs of these terminal reservoirs will be provided the opportunity to directly utilize the respective capacities in order to optimize the operation of both local and SWP facilities.

Access to such capacity will be provided in a manner designed to ensure that any resulting changes in flow regimes into the reservoirs do not cause a significant adverse effect upon the manner in which these reservoirs were designed to function pursuant to the state water contracts and statutory requirements. The objective of this process is to provide additional flexibility and water management benefits to participating contractors consistent with the usage of such reservoirs as transportation facilities in the overall SWP operations.

DWR will attempt to work out similar arrangements for Del Valle Reservoir.

#### **7. Interruptible Water Service Program.**

a. Present Surplus (including unscheduled), Wet Weather and 12(d) water will be replaced by Interruptible water service. Whenever DWR has project water available for delivery to Contractors that is not needed for fulfilling entitlement delivery requests or meeting the project operational commitments, including storage goals for the current or following years, DWR will offer such water to Contractors in proportion to their annual entitlements for that year and Contractors taking such water will pay to DWR the Melded Power Rate for power costs incurred by DWR for such service.

b. Implementation would be in substantial conformance with the attached Exhibit B entitled "Possible Implementation of an Interruptible Water Service Program" dated December 1, 1994.

**8. Non-project water transport.** Contractors shall have the right to transport non-project water in project facilities. Power charges for non-project water delivered to Contractors shall be the same as for project water. Priority for conveyance of non-project water shall be as set forth in Principle 7.

#### **9. Water storage outside service area.**

a. Water stored outside a Contractor's service area is reserved exclusively for use in the

storer's service area. Such water cannot be sold.

b. "Storer" vs. "seller" alternative tracks: in any water year, a Contractor may elect to be a storer or seller, but not both.

i. Storing Contractors will not be allocated water beyond their total demand, including storage.

c. Existing carryover rules under Article 12(e) will be maintained. If a Contractor uses Article 12(e), the Contractor cannot sell water in the next year pursuant to Principle 10. If a Contractor follows the storage track, the Contractor cannot sell water, pursuant to Principle 10, in the year in which it adds to storage. The timing of the election will be determined during implementation.

d. There will be no limits on the amount of ground water storage outside a Contractor's service area in an existing and operational ground water storage program. Contractors will cooperate to develop or establish ground water storage programs.

e. The annual water supply allowed to be stored in current SWP surface conservation facilities and non-SWP surface water storage facilities located outside a Contractor's service area shall be limited, per Contractor, as follows: A floor of 25% of annual Table A entitlement, not to exceed 100,000 acre-feet/year in any year in which DWR can meet less than 50% of requests. In any year in which DWR can meet 75% or more of requests, a maximum of 50% of annual Table A entitlement, not to exceed 200,000 acre-feet/year. There will be a sliding scale between 50% and 75% of requests from the floor to the maximum on a straight-line basis. In a year when DWR can meet 100% of requests, there will be no limit on surface water storage in non-project facilities. Storage capacity will be allocated on the basis of entitlements.

f. The storage constraints in Principle 9e shall not apply to any new South-of-Delta off-stream storage facilities involving SWP Contractor(s).

g. Bona fide exchanges (as distinguished from sales) will be defined during implementation.

h. Carryover water in project surface water conservation facilities is subject to "spill" in the following priority:

- i. water stored for non-SWP Contractor;
- ii. water stored for a SWP Contractor above its proportional share of available storage capacity based on Table A annual entitlement;
- iii. water stored for a SWP Contractor within its proportional share of available storage capacity based on Table A annual entitlement.
- iv. project water.

Determination of the allocation of spill will be made during implementation.

**10. Turn-back water pool sales.** There will be a turn-back water pool sales mechanism. For Contractors following the "seller" track, allocations of entitlement water not required by a Contractor will be sold according to the following priorities:

a. Contractors will be encouraged to amend downward their Table A build-up schedule consistent with their actual needs. All Contractors will cooperate in such amendments, and DWR will process amendments expeditiously.

b. An annual entitlement water pool will be formed by DWR for willing SWP sellers and buyers and priced as follows.

i. For water offered on or before:

February 15 -- the seller will receive 50% of Delta Rate for water sold;

March 15 -- the seller will receive 25% of Delta Rate for water sold.

c. On the dates above, SWP Contractors will have first priority to purchase the water. If water is not sold by March 1, an offering Contractor can cancel its offer by March 1 or it will be considered re-offered on March 15.

d. On the dates above, water offered but not sold to other Contractors may be purchased by DWR at the same price as in item a, above, for the purpose of providing additional carryover storage for the SWP Contractors. DWR will consult with Contractors regarding such purchases.

e. In the March 15 market, water offered but not sold under the first two priorities may be offered to non-Contractors at market price, subject to a right of first refusal for SWP Contractors.

f. Sellers must elect to either store or sell. Sellers will not be permitted to store pursuant to Principle 10 during any year in which they have elected to sell water, except that under the short term provisions of Art. 12(e) they can carryover water during the last three months of the year, but cannot elect to sell in the subsequent year.

**11. Conforming contract amendments.** SWP contracts will be amended as appropriate to conform to this Statement of Principles.

**12. Project improvements.** DWR reaffirms its obligation under Article 6(c) of the water supply contracts, subject to the availability of funds, to make all reasonable efforts consistent with sound fiscal policies and proper operating procedures to complete the project facilities and other water management programs necessary for delivery of project water to the Contractors in

the total amounts designated in each contract's Table A.

**13. Integrated package.** Contractors will participate in all of the provisions of these Principles or none. A Contractor who chooses not to participate shall receive none of the benefits provided in these Principles.

**14. No precedent.** If the parties do not enter into the amendments, the parties agree not to utilize this document in any court proceedings relating to matters addressed in this agreement.

#### **IMPLEMENTATION**

The Contractors agree to expeditiously obtain preliminary determinations from their respective Boards of Directors as to whether this Statement of Principles is acceptable. The parties set March 31, 1995, as the goal for reaching final agreement.

**Nothing in this Statement of Principles is intended to be, nor shall it be interpreted as, a waiver by any party of its rights in law or equity.**

Executed this 1<sup>st</sup> day of December, 1994:

Kern County Water Agency

by [Signature]

General Manager

Tulare Lake Basin Water Storage District

by [Signature]

Member, Board of Directors

Metropolitan Water District of Southern California

by [Signature]

General Manager

Solano County Water Agency

by [Signature]

General Manager

Department of Water Resources

by [Signature]

Director

Coachella Valley Water District

by [Signature]

General Manager

Central Coast Water Authority

by [Signature]

General Counsel

EXHIBIT A

STATE WATER PROJECT  
PAYMENT MANAGEMENT PROGRAM

(Millions of Dollars)

Contractor Payment Management Program

|  | (1)<br>[1]<br>Revenue | (2)<br>SWP [2]<br>Capital<br>Resources | (4)<br>Funds<br>Available<br>Col 1-2 | (5)<br>Ag<br>Contractors<br>24.7% | (6)<br>Urban<br>Contractors<br>75.3% |
|--|-----------------------|--|--------------------------------------|-----------------------------------|--------------------------------------|
| 1995   | .0.0                  | 0.0                                    | 0.0                                  | 0.0                               | 0.0                                  |
| 1996   | 0.0                   | 0.0                                    | 0.0                                  | 0.0                               | 0.0                                  |
| 1997   | 14.0                  | 0.0                                    | 14.0                                 | 10.0                              | 4.0                                  |
| 1998   | 23.0                  | 6.0                                    | 17.0                                 | 10.0                              | 7.0                                  |
| 1999   | 38.0                  | 6.0                                    | 32.0                                 | 10.0                              | 22.0                                 |
| 2000   | 39.0                  | 6.0                                    | 33.0                                 | 10.0                              | 23.0                                 |
| Consultation with DWR and SWC's to discuss use of funds above \$40.5 million |                       |  |                                      |                                   |                                      |
| 2001   | 45.0                  | 4.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2002   | 45.0                  | 4.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2003   | 45.0                  | 4.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2004   | 45.0                  | 4.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2005   | 44.0                  | 3.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2006   | 44.0                  | 3.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2007   | 45.0                  | 4.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2008   | 45.0                  | 4.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2009   | 44.0                  | 3.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2010   | 45.0                  | 4.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2011   | 47.0                  | 6.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2012   | 49.0                  | 8.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2013   | 48.0                  | 7.5                                    | 40.5                                 | 10.0                              | 30.5                                 |
| 2014   | 51.0                  | 10.5                                   | 40.5                                 | 10.0                              | 30.5                                 |
| 2015   | 56.0                  | 15.5                                   | 40.5                                 | 10.0                              | 30.5                                 |
| 2016 to<br>2035  | 56.0 [3]              | 15.5                                   | 40.5                                 | 10.0                              | 30.5                                 |

[1] Data from Bulletin 132-93

[2] DWR to create a Capital Resources Account of \$22.7 million from Bond Reserve Funds separate from the amounts shown.

[3] Initial estimate

## POSSIBLE IMPLEMENTATION

of an

### INTERRUPTIBLE WATER SERVICE PROGRAM

\* Present Surplus, Wet Weather and 12(d) water replaced by Interruptible water service. Any existing priorities to delivery of water beyond scheduled entitlement is eliminated; all Contractors will have equal priority to Interruptible water in proportion to entitlements.

#### Delivery Priority:

1. scheduled entitlement deliveries;
2. interruptible up to Table A;
3. non-project up to Table A;
4. all additional interruptible; and
5. all additional non-project water.

- \* Existing balances of the above water types eliminated.
- \* All Scheduled delivery allocations to be based on contractual Table A.
- \* Interruptible available only as determined by DWR after Scheduled deliveries and operational commitments are met.
- \* Interruptible allocations based on Table A for that year.
- \* Interruptible plus Scheduled entitlement may add up to more than a Contractor's Table A for that year.
- \* Submit request for Scheduled deliveries, if Interruptible water is available, then anything over Scheduled deliveries considered Interruptible as long as it's available.
- \* Interruptible water may not be carried over.
- \* Conveyance charges for interruptible deliveries same as Scheduled deliveries, even if the total amount goes over Table A for that year.
- \* Interruptible available to all reasonable, beneficial uses. (Not restricted to storage or recharge programs.)
- \* Delivery of Interruptible water in one year does not impact a Contractor's Table A or the allocation in the next year.

- \* Contractor can adjust delivery schedule for Interruptible at any time but can only adjust Scheduled Entitlement deliveries weekly.

- \* DWR will use best effort to avoid economic impacts due to inability to Contractors to take water during wet periods (specific language to be developed during implementation).

December 1, 1994

1  
2 STATE OF CALIFORNIA  
3 THE RESOURCES AGENCY  
4 DEPARTMENT OF WATER RESOURCES

5 AMENDMENT NO. 25 (THE MONTEREY AMENDMENT)  
6 TO WATER SUPPLY CONTRACT BETWEEN THE  
7 STATE OF CALIFORNIA DEPARTMENT OF  
8 WATER RESOURCES AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN  
9 CALIFORNIA

10 THIS AMENDMENT to the Water Supply Contract is made this  
11 13<sup>th</sup> day of December, 1995, pursuant to the  
12 provisions of the California Water Resources Development Bond Act,  
13 the Central Valley Project Act, and other applicable laws of the  
14 State of California, between the State of California, acting by and  
15 through its Department of Water Resources, herein referred to as the  
16 "State", and The Metropolitan Water District of Southern California,  
17 herein referred to as the "District".

18 RECITALS:

19 WHEREAS, the State and the District have entered into and  
20 subsequently amended a water supply contract providing that the  
21 State will supply certain quantities of water to the District, and  
22 providing that the District shall make certain payments to the  
23 State, and setting forth the terms and conditions of such supply and  
24 such payment; and

25 WHEREAS, on December 1, 1994, representatives of the  
26 contractors and the State executed a document entitled "Monterey  
27 Agreement - Statement of Principles - By the State Water Contractors  
28 and the State of California Department of Water Resources For  
Potential Amendments To The State Water Supply Contracts" (the  
"Monterey Agreement"); and

1           WHEREAS, the contractors and the State have negotiated an  
2 amendment to the water supply contracts to implement provisions of  
3 the Monterey Agreement (the "Monterey Amendment"); and

4           WHEREAS, the State and the District desire to implement such  
5 provisions by incorporating this Monterey Amendment into the water  
6 supply contract;

7           NOW, THEREFORE, IT IS MUTUALLY AGREED that the following  
8 changes and additions are hereby made to the District's water supply  
9 contract with the State:

10  
11           **1. Article 1(d) is amended to read:**

12           **(d) Contractor**

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

19  
20           **2. Article 1(m) is amended to read:**

21           **(m) Minimum Project Yield**

22           "Minimum project yield" shall mean the dependable annual  
23 supply of project water to be made available, estimated to be  
24 4,185,000 acre-feet per year, said amount to be determined by the  
25 State on the basis of coordinated operation studies of initial  
26 project conservation facilities and additional project conservation  
27 facilities, which studies shall be based upon:

1           (1) The estimated relative proportion of deliveries for  
2 agricultural use to deliveries for municipal use for the year 1990,  
3 and the characteristic distributions of demands for these two uses  
4 throughout the year.

5           (2) Agreements now in effect or as hereafter amended or  
6 supplemented between the State and the United States and others  
7 regarding the diversion or utilization of waters of the Delta or  
8 streams tributary thereto.

9  
10           **3. Article 1(hh) is amended to read:**

11           (hh) **Water System Facilities**

12           (hh) "Water System Facilities" shall mean the following  
13 facilities to the extent that they are financed with water system  
14 revenue bonds or to the extent that other financing of such  
15 facilities is reimbursed with proceeds from water system revenue  
16 bonds:

17                   (1) The North Bay Aqueduct,

18                   (2) The Coastal Branch Aqueduct,

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

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

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

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

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

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

10 (9) A project facilities corporation yard, and

11 (10) A project facilities operation center.

12  
13 **4. Article 1(jj) is added to read:**

14 **(jj) Interruptible water**

15 "Interruptible water" shall mean project water available as  
16 determined by the State that is not needed for fulfilling  
17 contractors' annual entitlement deliveries as set forth in their  
18 water delivery schedules furnished pursuant to Article 12 or for  
19 meeting project operational requirements, including storage goals  
20 for the current or following years.

21  
22 **5. Article 1(kk) is added to read:**

23 **(kk) Nonproject water**

24 "Nonproject water" shall mean water made available for  
25 delivery to contractors that is not project water as defined in  
26 Article 1(l).

1           6.     Article 1(11) is added to read:

2           (11)    "Monterey Amendments" shall mean this amendment and  
3 substantially similar amendments to other contractors' water supply  
4 contracts that include, among other provisions, the addition of  
5 Articles 51 through 56.

6  
7           7.     Article 4 is amended to read:

8           4.     OPTION FOR CONTINUED SERVICE

9           By written notice to the State at least six (6) months prior  
10 to the expiration of the term of this contract, the District may  
11 elect to receive continued service after expiration of said term  
12 under the following conditions unless otherwise agreed to:

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

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

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

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

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

1 Other terms and conditions of the continued service shall be  
2 reasonable and equitable and shall be mutually agreed upon. In the  
3 event that said terms and conditions provide for continued service  
4 for a limited number of years only, the District shall have the same  
5 option to receive continued service here provided for upon the  
6 expiration of that and each succeeding period of continued service.  
7

8 8. Article 7(a) is amended to read:

9 (a) Changes in Annual Entitlements

10 The District may, at any time or times during the term of this  
11 contract, by timely written notice furnished to the State, request  
12 that project water be made available to it thereafter in annual  
13 amounts greater or less than the annual entitlements designated in  
14 Table A of this contract. Subject to approval by the State of any  
15 such request, the State's construction schedule shall be adjusted  
16 to the extent necessary to satisfy the request, and the requested  
17 increases or decreases in said annual entitlements shall be  
18 incorporated in said Table A by amendment thereof. Requests for  
19 changes in annual entitlements for more than one year shall be  
20 approved by the State: Provided, That no change shall be approved  
21 if in the judgment of the State it would impair the financial  
22 feasibility of project facilities.  
23

24 9. The title of Article 12 is amended to read "Priorities,  
25 Amounts, Times and Rates of Deliveries".  
26  
27  
28

1           10. Article 12(a)(2) is amended to read:

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

14  
15           11. Article 12(d) is deleted.

16  
17           12. Article 12(f) is added to read:

18           (f) **Priorities**

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

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

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

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

28

1 Fourth, project water previously stored pursuant to Articles  
2 12(e) and 56.

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

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

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

9  
10 **13. Article 14 is amended to read:**

11 **Curtailment of Delivery**

12 **(a) State May Curtail Deliveries**

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

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

26 In the event of any discontinuance or reduction of delivery  
27 of project water pursuant to subdivision (a) of this article, the  
28 District may elect to receive the amount of annual entitlement which  
otherwise would have been delivered to it during such period under

1 the water delivery schedule for that year at other times during the  
2 year or the succeeding year to the extent that such water is then  
3 available and such election is consistent with the State's overall  
4 delivery ability, considering the then current delivery schedules  
5 of annual entitlement to all contractors.

6  
7 **14. Article 16(a) is amended to read:**

8 **(a) Limit on Total of all Maximum Annual Entitlements**

9 The District's maximum annual entitlement hereunder, together  
10 with the maximum annual entitlements of all other contractors, shall  
11 aggregate no more than the minimum project yield as defined herein  
12 and in no event more than 4,185,000 acre-feet of project water.

13  
14 **15. Article 18 is amended to read:**

15 **18. SHORTAGE IN WATER SUPPLY**

16 **(a) Shortages; Delivery Priorities**

17 In any year in which there may occur a shortage due to drought  
18 or any other cause whatsoever, in the supply of project water  
19 available for delivery to the contractors, with the result that such  
20 supply is less than the total of the annual entitlements of all  
21 contractors for that year, the State shall allocate the available  
22 supply in proportion to each contractor's annual entitlement as set  
23 forth in its Table A for that year and shall reduce the allocation  
24 of project water to each contractor using such water for  
25 agricultural purposes and to each contractor using such water for  
26 other purposes by the same percentage of their respective annual  
27 entitlements for that year: Provided, that the State may allocate  
28 on some other basis if such is required to meet minimum demands of

1 contractors for domestic supply, fire protection, or sanitation  
2 during the year. If a contractor is allocated more water than it  
3 requested, the excess water shall be reallocated among the other  
4 contractors in proportion to their annual entitlements as provided  
5 for above. The foregoing provisions of this subdivision shall be  
6 inoperative to the extent necessary to comply with subdivision (c)  
7 of this article and to the extent that a contractor's annual  
8 entitlement for the respective year reflects established rights  
9 under the area of origin statutes precluding a reduction in  
10 deliveries to such contractor.

11 (b) - Deleted

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

13 In the event that the State, because of the establishment by  
14 a party of a prior right to water under the provisions of Sections  
15 11460 through 11463 of the Water Code, enters into a contract with  
16 such party for a dependable supply of project water, which contract  
17 will cause a permanent shortage in the supply of project water to  
18 be made available to the District hereunder:

19 (1) The State shall: (i) equitably redistribute the costs of  
20 all transportation facilities included in the System among all  
21 contractors for project water, taking into account the diminution  
22 of the supply to the District and other prior contractors in  
23 accordance with the terms of their contracts, and (ii) revise the  
24 District's annual entitlements and maximum annual entitlement, by  
25 amendment of Table A of this contract to correspond to the reduced  
26 supply of project water to be made available to the District:  
27 Provided, That such redistribution of costs of transportation  
28 facilities shall not be made until there has been reasonable

1 opportunity for the District to exercise the option provided for in  
2 (2) below, and for other prior contractors to exercise similar  
3 options.

4 (2) The District, at its option, shall have the right to use  
5 any of the project transportation facilities which by reason of such  
6 permanent shortage in the supply of project water to be made  
7 available to the District are not required for delivery of project  
8 water to the District, to transport water procured by it from any  
9 other source: Provided, That such use shall be within the limits  
10 of the capacities provided in the project transportation facilities  
11 for service to the District under this contract: Provided further,  
12 That, except to the extent such limitation in Section 12931 of the  
13 Water Code be changed, the District shall not use the project  
14 transportation facilities under this option to transport water the  
15 right to which was secured by the District through eminent domain  
16 unless such use be approved by the Legislature by concurrent  
17 resolution with a majority of the members elected to each house  
18 voting in favor thereof. This option shall terminate upon a  
19 redistribution of costs of transportation facilities by the State  
20 pursuant to (1) above. In the event that this option is exercised,  
21 the State shall take such fact into account in making such  
22 redistribution of costs, and shall offset such use as is made of the  
23 project transportation facilities pursuant thereto against any  
24 reduction in the District's payment obligation hereunder resulting  
25 from such redistribution of costs.

1           (d)    **Reinstatement of Entitlements**

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

11           (e)    **Advance Notice of Delivery Reductions**

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

20           (f)    **No Liability for Shortages**

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

27  
28

1           16. Old Article 21 "Sale of Surplus Water" is deleted and  
2           replaced by new Article 21 "Interruptible Water Service"  
3           to read:

4           21. Interruptible Water Service

5           (a) Allocation of Interruptible Water

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

25           (b) Rates

26           For any interruptible water delivered pursuant to this  
27 article, contractors shall pay the State the same (including  
28 adjustments) for power resources (including on-aqueduct,

1 off-aqueduct, and any other power) incurred in the transportation  
2 of such water as if such interruptible water were entitlement water,  
3 as well as all incremental operation, maintenance, and replacement  
4 costs, and any other incremental costs, as determined by the State.  
5 The State shall not include any administrative or contract  
6 preparation charge. Incremental costs shall mean those nonpower  
7 costs which would not be incurred if interruptible water were not  
8 scheduled for or delivered to the contractor. Only those  
9 contractors not participating in the repayment of the capital costs  
10 of a reach shall be required to pay any use of facilities charge for  
11 the delivery of interruptible water through that reach.

12 (c) **Contracts**

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

18  
19 **17. Article 22(j) is amended to read:**

20 (j) Notwithstanding provisions of Article 22(a) through (i),  
21 the capital cost component and the minimum OMP&R component of the  
22 Delta Water Charge shall include an annual charge to recover the  
23 District's share of the conservation portion of the water system  
24 revenue bond financing costs. Charges to the District for these  
25 costs shall be calculated in accordance with provisions in  
26 Article 50 of this contract. Charges for the conservation portion  
27 of the water system revenue bond financing costs shall not be  
28 affected by any reductions in payments pursuant to Article 51.

1           18. The first paragraph of Article 24(b) is amended to read:

2           (b) In the first step, the total amount of capital costs of  
3 each aqueduct reach to be returned to the State shall be allocated  
4 among all contractors entitled to delivery of project water from or  
5 through the reach by the proportionate use of facilities method of  
6 cost allocation and in accordance with (1) and (2) below. The  
7 measure of the proportionate use of each contractor of each reach  
8 shall be the average of the following two ratios: (i) the ratio of  
9 the contractor's maximum annual entitlement to be delivered from or  
10 through the reach to the total of the maximum annual entitlements  
11 of all contractors to be delivered from or through the reach from  
12 the year in which charges are to be paid through the end of the  
13 project repayment period and (ii) the ratio of the capacity provided  
14 in the reach for the transport and delivery of project water to the  
15 contractor to the total capacity provided in the reach for the  
16 transport and delivery of project water to all contractors served  
17 from or through the reach from the year in which charges are to be  
18 paid through the end of the project repayment period. Allocations  
19 of capital costs to the District pursuant hereto shall be on the  
20 basis of relevant values which will be set forth in Table B by the  
21 State as soon as designs and cost estimates are prepared by it  
22 subsequent to receipt of requests from the District as to the  
23 maximum monthly delivery capability to be provided in each aqueduct  
24 reach of the project transportation facilities for the transport and  
25 delivery of project water to the District, pursuant to  
26 Article 17(a): Provided, That these values shall be subject to  
27 redetermination by the State in accordance with Article 28: Provided  
28 further, That the principles and procedures set forth in this

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

7  
8 **19. Article 24(g) is amended to read:**

9 (g) Notwithstanding provisions of Article 24(a) through (d),  
10 the capital cost component of the Transportation Charge shall  
11 include an annual charge to recover the District's share of the  
12 transportation portion of the water system revenue bond financing  
13 costs. Charges to the District for these costs shall be calculated  
14 in accordance with the provisions of Article 50 of this contract.  
15 Charges for the transportation portion of the water system revenue  
16 bond financing costs shall not be affected by any reductions in  
17 payments pursuant to Article 51.

18  
19 **20. Article 25(d) (3) is amended to read:**

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

1           21. Article 50(j) is added to read:

2           (j) Amounts payable under this article shall not be affected  
3 by any reductions in payments pursuant to Article 51.

4  
5           22. Article 51 is added to read:

6           51. FINANCIAL ADJUSTMENTS

7           (a) General Operating Account

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

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

21           (3) The balance in the General Operating Account will  
22 increase pursuant to subdivision (e)(3)(v) of this article to an  
23 amount determined by the State but not in excess of \$32 million.  
24 However, after the year 2001, the maximum amount of the fund may  
25 increase or decrease annually by not more than the same percentage  
26 as the increase or decrease in the charges, other than power charges  
27 for pumping water, to all the contractors for the previous year from  
28

1 the charges for the year before that for obligations under  
2 subdivisions (c)(2)(ii) and (iii) of this article.

3 (b) **State Water Facilities Capital Account**

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

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

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

24 (c) **Calculation of Financial Needs**

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

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

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

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

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

19           (iv) Any amount required for transfer to the California  
20 Water Fund in reimbursement as described in Water Code section  
21 12937(b)(3) for funds utilized from said fund for construction of  
22 the State Water Resources Development System.

23           (v) For the years 1998 and thereafter, the amount needed  
24 for deposits into the State Water Facilities Capital Account as  
25 provided in subdivision (b) of this article, but (A) not more than  
26 \$6 million per year for the years 1998, 1999 and 2000, and (B) not  
27 more than \$4.5 million per year for the years 2001 and thereafter.

28

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

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

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

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

12 (d) **Apportionment of Reductions between Agricultural and**  
13 **Urban Contractors**

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

20 (2) Reductions shall be phased in as follows:

21 (i) In 1997 reductions in the amount of \$14 million are  
22 projected to be available and shall be applied as follows: the first  
23 \$10 million of reductions shall be apportioned among the  
24 Agricultural Contractors, and the remaining reductions shall be  
25 apportioned among the Urban Contractors.

26 (ii) In 1998 reductions in the amount of \$17 million are  
27 projected to be available and shall be applied as follows: the first  
28 \$10 million of reductions shall be apportioned among the

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

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

8 (iv) In 2000 reductions in the amount of \$33 million are  
9 projected to be available and shall be applied as follows: the first  
10 \$10 million of reductions shall be apportioned among the  
11 Agricultural Contractors, and the remaining reductions shall be  
12 apportioned among the Urban Contractors.

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

27 (ii) In the event that the aggregate amount of  
28 reductions available in any of the years 1997 through 2000 is

1 greater than the sum of (A) the respective amount projected for such  
2 year in subdivision (d)(2) above, plus (B) the amount of any  
3 shortfall with accrued interest at the project interest rate,  
4 remaining from any prior year to be applied, the excess shall be  
5 applied for the purposes and in the amounts per year described in  
6 subdivisions (e)(3)(iii), (iv), (v) and (vi) of this article, in  
7 that order.

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

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

18 (ii) If reductions are available in an amount less than  
19 \$40.5 million in any of these years, the reductions shall be divided  
20 on a 24.7% - 75.3% basis between the Agricultural Contractors and  
21 the Urban Contractors respectively. Any such reductions not made  
22 due to shortages shall be applied without interest in the next year  
23 in which reductions in an amount in excess of \$40.5 million are  
24 available pursuant to subdivision (e)(3) of this article with any  
25 remainder that is not available carried over without interest to be  
26 applied in the earliest subsequent years when reductions in excess  
27 of \$40.5 million are available.

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

6           (e) **Review of Financial Requirements**

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

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

15           (ii) If the aggregate amount that would have been  
16 charged to all contractors in any year but for this article exceeds  
17 the sum of (A) the amount of revenues needed for the purposes  
18 specified in subdivisions (c)(2)(i), (ii), (iii) and (iv), plus (B)  
19 \$40.5 million, plus (C) the amount determined pursuant to  
20 subdivision (c)(2)(v) of this article, the amount of such excess.

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

26           (2) After making the determinations required above, the State  
27 may collect the revenues for additional State Water Resources  
28

1 Development System purposes in the amount determined pursuant to  
2 subdivision (e)(1)(iii) above.

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

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

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

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

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

23 (v) Fifth, \$2 million per year shall be charged and  
24 collected by the State and deposited in the General Operating  
25 Account to bring the account ultimately up to an amount determined  
26 by the State but not in excess of \$32 million with adjustments as  
27 provided in subdivision (a) of this article. Any amount in the  
28

1 account in excess of this requirement shall be returned to general  
2 project revenues.

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

6 (f) **Apportionment of Reductions among Urban Contractors.**

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

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

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

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

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

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

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

24 (ii) The transportation capital cost component shall be  
25 weighted with a seventy percent (70%) factor. The weighting shall  
26 be accomplished by multiplying each Urban Contractor's percentage  
27 of transportation capital cost component repayment obligations as  
28

1 calculated in subdivision (f) (2) of this article by seventy percent  
2 (70%).

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

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

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

1 (g) Apportionment of Reductions Among Agricultural  
2 Contractors

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

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

27 (ii) Each Agricultural Contractor's estimated capital  
28 and minimum components of the Delta Water Charge and the

1 Transportation Charge (excluding off-aqueduct power charges) and  
2 Water Revenue Bond Surcharge shall be totaled for the years 1997  
3 through 2035.

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

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

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

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

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

24 (h) **Agricultural Rate Management Trust Fund**

25 (1) **Establishment.** Through a trust agreement executed  
26 contemporaneously with this amendment, the State and the  
27 Agricultural Contractors that sign the Monterey Amendments shall  
28

1 establish the Agricultural Rate Management Trust Fund with a  
2 mutually agreed independent trustee.

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

7 (3) **Deposits.** Each Agricultural Contractor that signs the  
8 trust agreement shall deposit into such contractor's account within  
9 the trust fund, at the same time as payments would otherwise be  
10 required by this contract to be made to the State, an amount equal  
11 to the amount by which such contractor's charges under this contract  
12 have been reduced by reason of this article, until the balance in  
13 such contractor's account within the trust fund is the same  
14 percentage of \$150,000,000 as such contractor's percentage share of  
15 reductions made available to all Agricultural Contractors as  
16 specified in subdivision (g) of this article. In 2002 and every  
17 fifth year thereafter, the Agricultural Contractors will review the  
18 maximum accumulation in the trust fund (the "Cap") and determine  
19 whether the cap should be adjusted. However, the Cap shall not be  
20 reduced below an aggregate of \$150,000,000 for all Agricultural  
21 Contractor accounts.

22 (4) **Trust Fund Disbursements.**

23 (i) In any year in which the State's allocation of water  
24 to an Agricultural Contractor by April 15th of that year is less  
25 than one-hundred percent (100%) of the contractor's requested annual  
26 entitlement for that year, the trustee shall, to the extent there  
27 are funds in that contractor's account, distribute to the State from  
28 such account for the benefit of that contractor an amount equal to

1 the percentage of the total of that contractor's statement of  
2 charges for that year, as redetermined by the State on or about May  
3 15th of that year, for (a) the Delta Water Charge; (b) the capital  
4 cost and minimum operation, maintenance, power and replacement  
5 components of the Transportation Charge (including off-aqueduct  
6 power charges); and (c) the water system revenue bond surcharge,  
7 that is equal to the percentage of that contractor's annual  
8 entitlement for that year that was not allocated to it by the State  
9 by April 15th of that year.

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

23 (iii) Each Agricultural Contractor shall remain  
24 obligated to make payments to the State as required by other  
25 articles in this contract. Any amount to be disbursed pursuant to  
26 subdivisions (h)(4)(i) and (h)(4)(ii) shall be paid by the trustee  
27 to the State on July 1 of the year involved and shall be credited  
28 by the State toward any amounts owed by such respective Agricultural

1 Contractor to the State as of that date. However, an Agricultural  
2 Contractor may direct the trustee to make the disbursement to that  
3 Agricultural Contractor which shall in turn make the payment to the  
4 State as required by other provisions of this contract. If the  
5 amount to be disbursed exceeds the amount owed to the State by such  
6 contractor as of July 1, the excess shall be disbursed by the  
7 Trustee to the State at the time of and in payment of future  
8 obligations owed to the State by such contractor. Alternatively,  
9 upon the request of such contractor, all or part of the excess shall  
10 be paid by the trustee to that contractor in reimbursement of prior  
11 payments by the contractor to the State for that year.

12 (5) **Payment of Supplemental Bills.** In any year in which a  
13 supplemental bill has been submitted to an Agricultural Contractor  
14 pursuant to subdivision (c)(4) of this article, such supplemental  
15 bill shall be treated as reducing by an equal amount the obligation  
16 of such contractor for that year to make payments into the  
17 Agricultural Rate Management Trust Fund. To the extent that such  
18 contractor has already made payments to the trust fund in an amount  
19 in excess of such contractor's reduced trust fund payment  
20 obligation, such contractor may request the trustee to use the  
21 excess from the trust fund to pay the supplemental bill.

22 (6) **Discharge of Payment Obligation.** Each payment to the  
23 State by the trust fund shall discharge and satisfy the Agricultural  
24 Contractor's obligation to pay the amount of such payment to the  
25 State. No reimbursement of the trust fund by the Agricultural  
26 Contractor for such payments shall be required. However, each  
27 Agricultural Contractor shall continue to make deposits to the trust  
28 fund matching the amount of each year's reductions as provided in

1 subdivision (d) of this article so long as the amount in that  
2 contractor's account is less than its share of the Cap.

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

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

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

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

19 (i) County of Kings,

20 (ii) Dudley Ridge Water District,

21 (iii) Empire West Side Irrigation District,

22 (iv) Kern County Water Agency for 993,300 acre-feet of  
23 its entitlement,

24 (v) Oak Flat Water District,

25 (vi) Tulare Lake Basin Water Storage District.

26 (2) "Urban Contractor" shall mean every other agency having  
27 a long term water supply contract with the State as they exist as  
28 of the date of this amendment or in any reorganized form as well as

1 Kern County Water Agency for 119,600 acre-feet of its entitlement.

2 (j) Except as provided in subdivisions (c)(4) and (c)(5),  
3 this article shall not be interpreted to result in any greater State  
4 authority to charge the contractors than exists under provisions of  
5 this contract other than this article.

6  
7 **23. Article 52 is added to read:**

8 **52. KERN WATER BANK**

9 (a) The State shall convey to the Kern County Water Agency  
10 (KCWA) in accordance with the terms set forth in the agreement  
11 between the State of California Department of Water Resources and  
12 Kern County Water Agency entitled "Agreement for the Exchange of the  
13 Kern Fan Element of the Kern Water Bank" (the Kern Water Bank  
14 Contract), the real and personal property described therein.

15 (b) Subject to the approval of KCWA, other contractors may  
16 be provided access to and use of the property conveyed to KCWA by  
17 the Kern Water Bank Contract for water storage and recovery. Fifty  
18 percent (50%) of any project water remaining in storage on December  
19 31, 1995, from the 1990 Berrenda Mesa Demonstration Program and the  
20 La Hacienda Water Purchase Program shall be transferred to KCWA  
21 pursuant to the Kern Water Bank Contract. The remaining fifty  
22 percent (50%) of any such water (approximately 42,828.5 acre-feet)  
23 shall remain as project water and the State's recovery of such  
24 project water shall be pursuant to the provisions of a separate  
25 recovery contract. Any other Kern Water Bank demonstration program  
26 water shall remain as project water and the State's recovery of such  
27 water shall be pursuant to the provisions of the respective  
28 contracts for implementation of such demonstration programs.

1           24. Article 53 is added to read:

2           53. PERMANENT TRANSFERS AND REDUCTIONS OF ENTITLEMENT

3           (a) Article 41 provides that no assignment or transfer of  
4 a contract or any part thereof, rights thereunder or interest  
5 therein by a contractor shall be valid unless and until it is  
6 approved by the State and made subject to such reasonable terms and  
7 conditions as the State may impose. In accordance with State policy  
8 to assist water transfers, the State and the County of Kings, Dudley  
9 Ridge Water District (DRWD), Empire West Side Irrigation District,  
10 Kern County Water Agency (KCWA), Oak Flat Water District and Tulare  
11 Lake Basin Water Storage District (for the purposes of this article  
12 the "Agricultural Contractors") shall, subject to the conditions set  
13 forth in this article, expeditiously execute any necessary documents  
14 and approve all contracts between willing buyers and willing sellers  
15 until permanent transfers totaling 130,000 acre-feet of annual  
16 entitlements of the Agricultural Contractors and, to the extent  
17 provided in such contracts, rights in project transportation  
18 facilities related to such annual entitlement have been made to  
19 other contractors (the "Urban Contractors") or noncontractors in  
20 accordance with the provisions of this article. Such approval  
21 requirement shall apply to all contracts executed prior to January  
22 1, 2011. KCWA shall be responsible for approval of such transfers  
23 for any portion of the 130,000 acre-feet not previously made  
24 available under this article by the other Agricultural Contractors.  
25 A contract between a willing buyer and a willing seller shall mean  
26 a contract between (1) a buyer which is an Urban Contractor or, to  
27 the extent provided in subdivision (e) of this article, a  
28 noncontractor and (2) a seller which is an Agricultural Contractor

1 or a public entity which obtains project water from an Agricultural  
2 Contractor.

3 (b) The State shall not be obligated to approve any transfer  
4 of annual entitlements if in its judgment the transfer would impair  
5 the security of the State's bondholders and the State may impose  
6 conditions on any transfer as necessary to make the delivery of the  
7 water operationally feasible and to assure that the transportation  
8 costs associated with the transferred entitlement are fully repaid.  
9 Transfers not approved by the State shall not be considered as part  
10 of the 130,000 acre-feet of annual entitlements provided for in this  
11 article.

12 (c) KCWA member units shall have 90 days to exercise a right  
13 of first refusal to purchase any annual entitlements being offered  
14 for sale to Urban Contractors by another KCWA member unit pursuant  
15 to this article, other than those annual entitlements made available  
16 to Urban Contractors by subdivision (d) of this article, by agreeing  
17 to pay the same price offered by the buyer. Any such sales to KCWA  
18 member units exercising such right of first refusal shall not be  
19 considered a part of the 130,000 acre-feet of annual entitlements  
20 provided for in this article.

21 (d) Any permanent transfers of annual entitlements by  
22 Agricultural Contractors to noncontractors, including transfers to  
23 KCWA urban member units or to KCWA's Improvement District Number 4,  
24 other than transfers pursuant to subdivision (c) of this article,  
25 will be considered a part of the 130,000 acre-feet of annual  
26 entitlements provided for in this article if the Urban Contractors  
27 have been given a right of first refusal to purchase such annual  
28

1 entitlements as well as transportation rights in accordance with the  
2 following terms and procedure:

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

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

19 (3) To exercise the right of first refusal, an Urban  
20 Contractor shall deliver to the State and the seller its NOI within  
21 the time period stated in the Notice of Proposed Contract and shall  
22 proceed in good faith to try to complete the transfer to the Urban  
23 Contractor. If two or more Urban Contractors deliver NOI's to the  
24 State, the amount of annual entitlement and transportation rights  
25 being sold shall be allocated among those Urban Contractors that are  
26 prepared to perform the purchase by the Performance Date provided  
27 for herein in proportion to their maximum annual entitlements, or  
28 in another manner acceptable to the Urban Contractors delivering the

1 NOIs. An offer by an Urban Contractor in its NOI to purchase less  
2 than the entire annual entitlement and transportation right being  
3 transferred shall not be deemed to be an effective exercise of the  
4 right of first refusal unless other Urban Contractors submit NOIs  
5 to purchase the remainder of the annual entitlement and  
6 transportation right or the noncontractor buyer agrees to purchase  
7 the remainder at the same unit price and on the same terms and  
8 conditions provided for in the Proposed Contract. The Performance  
9 Date shall be the date upon which the Urban Contractor is prepared  
10 to perform the purchase, which date shall be the later of: (1) 180  
11 days after the delivery of the NOI or (2) the date set forth in the  
12 Proposed Contract for the noncontractor buyer to perform the  
13 purchase.

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

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

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

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

16 (e) As used in this article, "price" shall mean the dollar  
17 amount of consideration provided for in the Proposed Contract.

18 (f) Upon the effective date of any such transfer, the seller  
19 shall be relieved of and the buyer shall become liable to the State  
20 for all prospective Delta Water Charges, the related Transportation  
21 Charges and any other charges for the annual entitlements and  
22 associated transportation rights transferred unless the seller and  
23 buyer provide otherwise in the contract for the transfer and the  
24 State approves such other provisions. However, the contractor  
25 making the sale shall remain obligated to the State to make the  
26 payments if the buyer defaults on its payments to the State related  
27 to the water transferred and is not a party to a long term water  
28 supply contract of the type contained in Department of Water

1 Resources Bulletin Number 141. If the contractor making the sale  
2 is required to make any payments to the State as a result of the  
3 buyer's default, the entitlement transferred to the defaulting buyer  
4 shall, if provided for in the Proposed Contract, revert back to the  
5 contractor making the sale. The buyer may also be liable for any  
6 charges imposed pursuant to subdivision (g) of this article.

7 (g) A contractor which is a buyer of annual entitlement  
8 pursuant to this article may receive deliveries using any portion  
9 of the capacity previously provided by the State in each reach of  
10 the project transportation facilities for such contractor that is  
11 necessary for transporting the entitlement purchased by it on the  
12 same basis as any other entitlement provided for in its Table A in  
13 effect prior to the date of the Monterey Amendment. Such contractor  
14 may also use any transportation rights transferred to it by a seller  
15 in the same manner as the seller was entitled to use them and any  
16 unused capacity in any of the reaches specified in this paragraph  
17 so long as project operations and/or priority of service of water  
18 to other contractors participating in repayment of capital costs in  
19 such reaches is not adversely affected. The State shall not be  
20 responsible for any resulting adverse impacts upon its ability to  
21 provide such contractor peaking capacity. The capital cost and  
22 minimum, operation, maintenance, power and replacement components  
23 of the Transportation Charge allocated to a buying contractor  
24 needing transportation capacity in excess of the capacity factors  
25 on which its charges are based in any reach shall be determined  
26 prospectively based upon the increase in the buying contractor's  
27 annual entitlement resulting from the purchase, and service of water  
28 to fulfill annual entitlement to other contractors shall not be

1 impaired. The capital cost and minimum operation, maintenance,  
2 power and replacement components of the Transportation Charges shall  
3 then be reallocated among the other entities participating in  
4 repayment of costs of that reach. For the purposes of this  
5 determination, all payments received by the State from the seller  
6 relating to the annual entitlement sold shall be deemed to have been  
7 received from the buying contractor. Any increased Transportation  
8 minimum operation, maintenance, power and replacement component  
9 charges allocated to the buying contractor pursuant to this  
10 subdivision (g) shall begin January 1 of the year following the  
11 effective date of the transfer.

12 (h) Individual contractors may transfer entitlements among  
13 themselves in amounts in addition to those otherwise provided for  
14 in this article. The State shall expeditiously execute any  
15 necessary documents and approve all contracts involving permanent  
16 sales of entitlements among contractors, including permanent sales  
17 among Urban Contractors. Such sales shall be subject to the  
18 provisions of subdivisions (b), (f) and (g) of this article;  
19 Provided, however, that for a buying contractor needing  
20 transportation capacity in excess of the capacity factors on which  
21 its charges are based in any reach, reallocation of the  
22 Transportation capital cost component charges for transfers other  
23 than (i) the 130,000 acre-feet provided for in this article and (ii)  
24 the approximate 33,000 acre-feet of transfers proposed from  
25 contractors located in Santa Barbara or San Luis Obispo counties,  
26 shall be determined both prospectively and retroactively.

27 (i) On January 1 following the year in which such Monterey  
28 Amendments take effect and continuing every year thereafter

1 until the end of the project repayment period: (i) Kern County Water  
2 Agency's (KCWA) annual entitlement for agricultural use as currently  
3 designated in Table A-1 of its contract shall be decreased by 40,670  
4 acre-feet; (ii) Dudley Ridge Water District's (DRWD) annual  
5 entitlement as currently designated in Table A of its contract shall  
6 be decreased by 4,330 acre-feet; and (iii) the State's prospective  
7 charges (including any adjustments for past costs) for the 45,000  
8 acre-feet of annual entitlements to be relinquished by KCWA and DRWD  
9 thereafter shall be deemed to be costs of project conservation  
10 facilities and included in the Delta Water Charge for all  
11 contractors in accordance with the provisions of Article 22. If,  
12 by November 20, 1995 and each October 1 thereafter until the  
13 Monterey Amendments of both KCWA and DRWD take effect, KCWA and DRWD  
14 at their option notify the State in writing that they will  
15 relinquish up to their shares of 45,000 acre-feet of annual  
16 entitlements for the following calendar year beginning before the  
17 Monterey Amendments take effect, the State, when and if the Monterey  
18 Amendments take effect, shall adjust the charges retroactively for  
19 the acre-feet relinquished by KCWA and DRWD to January 1 of each  
20 year for which water was relinquished. The delivery points for the  
21 45,000 acre-feet of annual entitlement to be relinquished shall be  
22 identified for the State by KCWA and DRWD to enable the State to  
23 calculate the transportation costs for the 45,000 acre-feet to be  
24 included in the Delta Water Charge.

25  
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28



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

5           The Maximum Allocation totals of 160,000 acre-feet and  
6 65,000 acre-feet shall not be subject to adjustment. The  
7 individual contractor's Maximum Allocations shall be adjusted  
8 only as agreed to among the contractors desiring to adjust their  
9 Maximum Allocations. Adjustments between the contractors shall  
10 be subject to approval of the State which approval shall be given  
11 unless there are adverse impacts upon another contractor  
12 participating in the reach which are unacceptable to such  
13 contractor. The participating contractors will, in consultation  
14 with the State, cooperate with each other in an effort to promote  
15 efficient utilization of Castaic Lake, and to minimize any  
16 adverse impacts to each other, through coordination of deliveries  
17 pursuant to other provisions of the State Water Contract as well  
18 as withdrawals of allocations pursuant to this article.

19           (b) The State shall operate Castaic and Perris Reservoirs  
20 as transportation facilities in a manner consistent with this  
21 article. A contractor desiring to withdraw a portion or all of  
22 its Maximum Allocation shall furnish the State with a proposed  
23 delivery schedule. The proposed schedule may be submitted as  
24 part of the preliminary water delivery schedule submitted  
25 pursuant to Article 12(a)(1). Upon receipt of a schedule the  
26 State shall promptly review it to ensure that the amounts, times  
27 and rates of delivery will be consistent with the State's ability  
28 to operate the reach. The contractor may modify its proposed

1 delivery schedule at any time, and the modified schedule shall be  
2 subject to review in the same manner. If necessary, the State  
3 may modify the schedule after consultation with the contractor  
4 and other contractors participating in repayment of that reach  
5 but may not change the total quantity of water to be withdrawn.  
6 As part of the consultation, the State shall advise a contractor  
7 if it determines a withdrawal will adversely impact the rate of  
8 delivery provided for the contractor in this contract. The State  
9 shall not be responsible for any such impacts.

10 (c) A contractor may withdraw all or a portion of its  
11 Maximum Allocation. It shall restore any withdrawn portion of  
12 such allocation by furnishing an equivalent amount of replacement  
13 water to the reservoir from which the water was withdrawn within  
14 five years from the year in which the withdrawal takes place. The  
15 unused portion of the allocation, in addition to any replacement  
16 water furnished to the reservoir, shall remain available for  
17 subsequent withdrawal. The State shall keep an accounting of the  
18 contractor's storage withdrawals and replacements. In any year,  
19 the State shall permit a contractor to withdraw an amount  
20 equivalent to the contractor's Maximum Allocation minus remaining  
21 replacement water requirements due to previous withdrawals. If  
22 the contractor fails to schedule and replace the withdrawn water  
23 within the five-year return period, the State shall provide the  
24 replacement water from water scheduled for delivery to the  
25 contractor in the sixth year or as soon as possible thereafter.  
26 The total amount of scheduled annual entitlement which a  
27 contractor can use in any one year for restoring its Maximum  
28 Allocation and storing water in surface storage facilities

1 outside of its service area pursuant to Article 56 shall be the  
 2 sum of the maximum amount the contractor can add to storage that  
 3 year pursuant to Article 56 and the amount of acre-feet shown in  
 4 column 2 of the following table, depending on the State's final  
 5 water supply allocation percentage as shown in column 1.

| 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  |

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

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

12 (d) For any replacement water furnished to reservoir  
13 storage pursuant to this article, the responsible contractor  
14 shall pay the State charges for the conservation, if any, and  
15 transportation of such replacement water as are associated with  
16 the type of replacement water that is furnished, as if such water  
17 were delivered to the turnout at the reservoir to which the  
18 replacement water is furnished. Adjustments from estimated to  
19 actual costs shall be subject to provisions applicable to the  
20 type of replacement water. The State shall not charge  
21 contractors for water withdrawn pursuant to this article.

22 (e) The State shall operate capacity in Castaic and Perris  
23 Reservoirs, not required for purposes of Maximum Allocation  
24 deliveries, in compliance with the requirement of Article 17(b)  
25 of The Metropolitan Water District of Southern California's water  
26 supply contract with the State to maintain an amount of water  
27 reasonably sufficient to meet emergency requirements of the  
28 contractors participating in repayment of that reach. A

1 contractor receiving water pursuant to this article accepts that  
2 the State shall not be liable for any damage, direct or indirect,  
3 arising from shortages in the amount of water to be made  
4 available from that reservoir to meet the contractor's actual  
5 emergency requirements as a result of prior storage withdrawals  
6 by that contractor pursuant to this article. Nothing in this  
7 article shall permit or require the State to adjust allocations  
8 or deliveries under Article 18.

9 (f) To the extent a contractor, during a calendar year,  
10 uses all or a portion of its Maximum Allocation, the State may,  
11 to the extent necessary to service project purposes, reduce that  
12 contractor's requested peaking service. Such reduction in  
13 peaking service shall only occur to the extent such usage of  
14 Maximum Allocation causes the State to be unable to provide all  
15 peaking service requested. This paragraph shall not apply to the  
16 extent the contractor requested usage of Maximum Allocation as  
17 part of the preliminary water delivery schedule submitted  
18 pursuant to Article 12(a)(1).

19 (g) The State may reduce water stored in Castaic Lake and  
20 Lake Perris to the extent necessary for maintenance and to  
21 respond to emergencies resulting from failure of project  
22 transportation facilities or of other supply importation  
23 facilities serving the State project service area. The State  
24 shall promptly replace water within the Maximum Allocation as  
25 soon as the need for the reduction terminates.

1           26. Article 55 is added to read:

2           55. Transportation of Nonproject Water

3           (a) Subject to the delivery priorities in Article 12(f),  
4 contractors shall have the right to receive services from any of  
5 the project transportation facilities to transport water procured  
6 by them from nonproject sources for delivery to their service  
7 areas and to interim storage outside their service areas for  
8 later transport and delivery to their service areas: Provided,  
9 that except to the extent such limitation in Section 12931 of the  
10 Water Code be changed, a contractor shall not use the project  
11 transportation facilities under this option to transport water  
12 the right to which was secured by the contractor through eminent  
13 domain unless such use be approved by the Legislature by  
14 concurrent resolution with the majority of the members elected to  
15 each house voting in favor thereof.

16           (b) For any nonproject water delivered pursuant to this  
17 article, contractors shall pay the State the same (including  
18 adjustments) for power resources (including on-aqueduct,  
19 off-aqueduct, and any other power) incurred in the conservation  
20 and transportation of such water as if such nonproject water were  
21 entitlement water, as well as all incremental operation,  
22 maintenance, and replacement costs, and any other incremental  
23 costs, which may include an administrative or contract  
24 preparation charge, all as determined by the State. Incremental  
25 costs shall mean those nonpower costs which would not be incurred  
26 if nonproject water were not scheduled for or delivered to  
27 contractors. Only those contractors not participating in the  
28 repayment of a reach shall be required to pay a use of facilities

1 charge for the delivery of nonproject water from or through that  
2 reach. Costs for transporting water placed into interim storage  
3 shall be paid in the same manner provided for in subdivision  
4 (c)(6) of Article 56.

5 (c) The amounts, times and rates of delivery of nonproject  
6 water shall be provided for pursuant to a water delivery schedule  
7 to be issued in the same manner as provided for in Article 12.  
8 The costs specified in this article shall be paid for at the same  
9 time the corresponding project water costs are paid.

10  
11 27. Article 56 is added to read:

12 56. Use, Storage and Sale of Project Water Outside of  
13 Service Area and Storage of Water in Project Surface  
Conservation Facilities

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

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

23 (b) Groundwater Storage Programs

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

26 (c) Storage of Project Water Outside of Service Area

27 (1) A contractor may elect to store project water outside  
28 its service area for later use within its service area, up to the

1 limits and in accordance with the provisions provided for in this  
2 subdivision (c) and any applicable water right laws, by setting  
3 forth on the preliminary water delivery schedule submitted to the  
4 State on or before October 1 of each year pursuant to Article  
5 12(a) the quantity of project water it wishes to store in the  
6 next succeeding year. There shall be no limit on the amount of  
7 project water a contractor can store outside its service area  
8 during any year in a then existing and operational groundwater  
9 storage program. The amount of project water a contractor can  
10 add to storage in project surface conservation facilities and in  
11 nonproject surface storage facilities located outside the  
12 contractor's service area each year shall be limited to the  
13 lesser of the percent of the contractor's Table A annual  
14 entitlement shown in column 2 or the acre-feet shown in column 3  
15 of the following table, depending on the State's final water  
16 supply allocation percentage as shown in column 1. However,  
17 there shall be no limit to storage in nonproject facilities in a  
18 year in which the State's final water supply allocation  
19 percentage is one hundred percent. These limits shall not apply  
20 to water stored pursuant to Article 12(e).

| 1.<br>Final Water Supply<br>Allocation<br>Percentage | 2.<br>Maximum Percent of<br>District's Annual<br>Entitlement That<br>Can be Stored | 3.<br>Maximum Acre-Feet<br>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                                       |

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

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

21           First, water, if any, stored for noncontractors.

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

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

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

28

1 (4) Any contractor electing to store project water outside  
2 its service area pursuant to this subdivision may not sell  
3 project water under the provisions of subdivision (d) of this  
4 article during the year in which it elected to store project  
5 water. This limitation shall not apply to replacement water  
6 furnished to Castaic and Perris Reservoirs pursuant to Article  
7 54, nor to the storage of water introduced into a groundwater  
8 basin outside a contractor's service area if recovery is intended  
9 to occur within that contractor's service area.

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

15 (6) For any project water stored outside its service area  
16 pursuant to this subdivision (c), a contractor shall pay the  
17 State the same (including adjustments) for power resources  
18 (including on-aqueduct, off-aqueduct, and any other power)  
19 incurred in the transportation of such water as the contractor  
20 pays for the transportation of annual entitlement to the reach of  
21 the project transportation facility from which the water is  
22 delivered to storage. If annual entitlement is stored, the Delta  
23 Water Charge shall be charged only in the year of delivery to  
24 interim storage. For any stored water returned to a project  
25 transportation facility for final delivery to its service area,  
26 the contractor shall pay the State the same for power resources  
27 (including on-aqueduct, off-aqueduct, and any other power)  
28 incurred in the transportation of such water calculated from the

1 point of return to the aqueduct to the turn-out in the  
2 contractor's service area. In addition, the contractor shall pay  
3 all incremental operation, maintenance, and replacement costs,  
4 and any other incremental costs, as determined by the State,  
5 which shall not include any administrative or contract  
6 preparation charge. Incremental costs shall mean those nonpower  
7 costs which would not be incurred if such water were scheduled  
8 for or delivered to the contractor's service area instead of to  
9 interim storage outside the service area. Only those contractors  
10 not participating in the repayment of a reach shall be required  
11 to pay a use of facilities charge for use of a reach for the  
12 delivery of water to, or return of water from, interim storage.

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

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

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

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

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

28

1           (4) Each year the price per acre-foot to be paid by the  
2 State to contractors selling water remaining in the Pool or  
3 placed in the Pool after February 15, but on or before March 15  
4 that is purchased by a contractor requesting such purchase by  
5 April 1 or by the State on April 1 shall be equal to twenty-five  
6 percent (25%) of the Delta water rate as of that date. The price  
7 per acre-foot to be paid to the State for the purchase of water  
8 from the Pool by a contractor placing a request for such purchase  
9 between March 2 and April 1 shall be equal to twenty-five percent  
10 (25%) of the Delta water rate as of the later date. Any water  
11 placed in the Pool on or before March 15 that is not purchased by  
12 a contractor or the State by April 1 may be withdrawn from the  
13 Pool by the selling contractor.

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

23           (6) Any water remaining in the Pool after April 1 that is  
24 not withdrawn by the selling contractor shall be offered by the  
25 State to contractors and noncontractors and sold to the highest  
26 bidder: Provided, that if the highest bidder is a noncontractor,  
27 all contractors shall be allowed fifteen days to exercise a right  
28 of first refusal to purchase such water at the price offered by

1 the noncontractor. The price to be paid to the selling  
2 contractor shall be the amount paid by the buyer exclusive of the  
3 amount to be paid by the buyer to the State pursuant to  
4 subdivision (d)(7) of this article.

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

22 (e) Continuation of Article 12(e) Carry-over Provisions

23 The provisions of this article are in addition to the  
24 provisions of Article 12(e), and nothing in this article shall be  
25 construed to modify or amend the provisions of Article 12(e).  
26 Any contractor electing to sell project water during any year in  
27 accordance with the provisions of subdivision (d) of this  
28 article, shall not be precluded from using the provisions of

1 Article 12(e) for carrying over water from the last three months  
2 of that year into the first three months of the succeeding year.

3 (f) **Bona Fide Exchanges Permitted**

4 Nothing in this article shall be deemed to prevent the  
5 District from entering into bona fide exchanges of project water  
6 for use outside the District's service area with other parties  
7 for project water or nonproject water if the State consents to  
8 the use of the project water outside the District's service area.

9 Also, nothing in this article shall be deemed to prevent the  
10 District from continuing those exchange or sale arrangements  
11 entered into prior to September 1, 1995, which had previously  
12 received any required State approvals. A "bona fide exchange"  
13 shall mean an exchange of water involving a contractor and  
14 another party where the primary consideration for one party  
15 furnishing water to another is the return of a substantially  
16 similar amount of water, after giving due consideration to the  
17 timing or other nonfinancial conditions of the return.

18 Reasonable payment for costs incurred in effectuating the  
19 exchange and reasonable deductions from water delivered, based on  
20 expected storage or transportation losses may be made. A "bona  
21 fide exchange" shall not include a transfer of water from one  
22 contractor to another party involving a significant payment  
23 unrelated to costs incurred in effectuating the exchange. The  
24 State, in consultation with the contractors, shall have authority  
25 to determine whether transfers of water constitute "bona fide  
26 exchanges" within the meaning of this paragraph and not disguised  
27 sales.

1 (g) Other Transfers

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

6  
7 28. All balances of wet weather and Article 12(d) water  
8 otherwise available to any contractor executing the Monterey  
9 Amendment shall be eliminated as of the effective date of such  
10 amendment and no new balances for such water shall be  
11 established.

12  
13 29. Effective Dates and Phase-in

14 (a) No Monterey Amendment to any contractor's water supply  
15 contract shall take effect unless and until both of the following  
16 have occurred (1) the Monterey Amendments to both the Kern County  
17 Water Agency's and The Metropolitan Water District of Southern  
18 California's contracts have been executed and no legal challenge  
19 has been filed within sixty days of such execution or, if filed,  
20 a final judgment of a court of competent jurisdiction has been  
21 entered sustaining or validating said amendments; and (2) the  
22 State has conveyed the property which constitutes the Kern Fan  
23 Element of the Kern Water Bank to Kern County Water Agency  
24 pursuant to the Kern Water Bank Contact provided for in Article  
25 52 either on or before October 1, 1996 or, if the conveyance on  
26 such date has been prevented by an interim court order, within  
27 ninety days after such court order has become ineffective so long  
28 as said ninety days expires not later than January 1, 2000. The

1 October 1, 1996 date and the January 1, 2000 date may be extended  
2 by unanimous agreement of the State, Kern County Water Agency and  
3 The Metropolitan Water District of Southern California.

4 (b) The State shall administer the water supply contracts  
5 of any contractors that do not execute the Monterey Amendment so  
6 that such contractors are not affected adversely or to the extent  
7 feasible beneficially by the Monterey Amendments of other  
8 contractors' water supply contracts.

9 (c) If a court of competent jurisdiction issues a final  
10 judgment or order determining that any part of a contractor's  
11 Monterey Amendment is invalid or unenforceable, all provisions of  
12 that amendment shall be of no force or effect as to such  
13 contractor, except as provided in subdivisions (e) and (f) of  
14 this paragraph.

15 (d) If any part of the Monterey Amendment of the Kern  
16 County Water Agency's or The Metropolitan Water District of  
17 Southern California's contracts or if the conveyance of the Kern  
18 Fan Element of the Kern Water Bank to the Kern County Water  
19 Agency provided for in Article 52 is determined by a court of  
20 competent jurisdiction in a final judgment or order to be invalid  
21 or unenforceable, the Monterey Amendments of all contractors and  
22 the Kern Water Bank Contract shall be of no force and effect  
23 except as provided in subdivisions (e) and (f) of this paragraph.

24 (e) Notwithstanding subdivisions (c), (d) and (f) of this  
25 paragraph, if any part of the Monterey Amendment of the Kern  
26 County Water Agency's or The Metropolitan Water District of  
27 Southern California's contract is determined by a court of  
28 competent jurisdiction in a final judgment or order to be invalid

1 or unenforceable, and if Articles 52 and 53 (i) have been  
2 implemented (i.e., the property which constitutes the Kern Fan  
3 Element of the Kern Water Bank has been conveyed by the State and  
4 the 45,000 acre-feet of annual entitlements have been  
5 relinquished to the State), the implementation of the  
6 relinquishment shall not be reversed unless the implementation of  
7 the conveyance is also reversed, and conversely, implementation  
8 of the conveyance shall not be reversed unless implementation of  
9 the relinquishment is also reversed. Nothing in this subdivision  
10 shall affect any party's right to seek additional damages,  
11 compensation or any other remedy available at law or in equity.

12 (f) The total invalidity or unenforceability of one  
13 contractor's Monterey Amendment as provided for in subdivision  
14 (c) of this paragraph or of all contractor's Monterey Amendments  
15 as provided for in subdivision (d) of this paragraph or of the  
16 Kern Water Bank Contract as provided for in subdivision (d) of  
17 this paragraph may be avoided only if such invalidity or  
18 unenforceability is explicitly waived in writing signed by the  
19 State, Kern County Water Agency and The Metropolitan Water  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 District of Southern California. In cases arising under  
2 subdivision (c) or (d), the affected contractor whose Monterey  
3 Amendment has been determined to be partially invalid or  
4 unenforceable must first request the waiver.

5  
6 IN WITNESS WHEREOF, the parties hereto have executed this  
7 Amendment on the date first above written.

8 Approved as to legal form  
9 and sufficiency

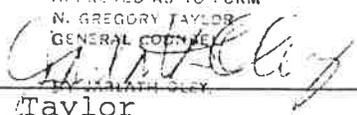
STATE OF CALIFORNIA  
DEPARTMENT OF WATER  
RESOURCES

10  
11   
12 Chief Counsel  
13 Department of Water Resources

  
Director

14  
15 Approved as to Form:

THE METROPOLITAN WATER  
DISTRICT OF SOUTHERN  
CALIFORNIA

16 APPROVED AS TO FORM  
17 N. GREGORY TAYLOR  
18 GENERAL COUNSEL  
  
N. Gregory Taylor  
General Counsel



19 The Metropolitan Water District  
20 of Southern California  
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